


HOW TO BECOME
A
LAW STENOGRAPHER

W. L. MASON



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HOW TO BECOME A LAW STENOGRAPHER

A COMPENDIUM OF LEGAL FORMS

CONTAINING A

COMPLETE SET OF LEGAL DOCUMENTS ACCOMPANIED WITH
FULL EXPLANATIONS AND DIRECTIONS FOR
ARRANGING ON THE TYPEWRITER

FOR STENOGRAPHERS AND
TYPEWRITER OPERATORS

AN INDISPENSABLE COMPANION FOR EVERY STENOGRAPHER
INTENDING TO TAKE A POSITION IN A LAW OFFICE

COMPILED BY

W. L. MASON

A Law and Convention Reporter of Thirty Years' Experience; Late Teacher of
Stenography and Typewriting in the Mechanics' Institute and the
De Witt Clinton High School; and for twelve years
Principal of the Metropolitan Shorthand
School, New York

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NEW YORK

ISAAC PITMAN AND SONS

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1909

PREFACE

THIS Compendium of Legal Forms is designed to afford a ready and practical aid to familiarity with law work, and is intended for use in High Schools and Business Colleges, as well as by individual stenographers who desire to prepare themselves to fill lucrative positions in law offices, or as court reporters.

The book contains a large number and variety of forms, together with directions for arranging the same on the typewriter, as well as explanations of peculiar terms and expressions used by lawyers, and a carefully compiled list of the Latin phrases in more common use, with definitions, as found in legal papers.

In using this Compendium, each document should be carefully studied, both as to its form and contents, then written on the typewriter several times, until it can be typed rapidly with ease and accuracy. Certain paragraphs should be memorized as indicated. The arrangement of headings, paragraphs, endings, etc., as given in the book, should be strictly followed. The forms herein presented for study are authentic legal documents, used in real legal transactions, or in actual trials of cases, and are not theoretical compilations of the compiler.

In preparing this new and revised edition of a work which has already had a wide circulation, and proven to be very popular, as well as invaluable to the ambitious stenographer and to the teacher of shorthand and typewriting who is aiming to prepare his students to enter law offices, several new features have been introduced, among them being a set of legal documents peculiar to other sections of the country outside of New York.

Another useful feature of this work is the very full Index with cross references, enabling a student to find at a glance not only any kind of legal document in common use contained in the preceding pages, but most of the terms and expressions employed in law offices.

Still another feature is the full explanation of each document, the meaning of which is not obvious at a glance.

The compiler of this work desires to express his appreciation of valuable aid afforded him by Mr. Charles T. Conger, Principal of the High School at Bakersfield, California, Judge C. L. Claffin, Attorneys W. B. Beazley, Fred Borton, and others who have made suggestions from time to time which have materially increased its value and efficiency.

*San Antonio, Texas,
May 1st, 1909.*

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SUGGESTIONS

TO

TYPEWRITER OPERATORS FOR ARRANGING LEGAL FORMS ON THE MACHINE

1. ALL words printed in capital letters in the following pages should be written "All Caps" on the machine.

2. Use ruled legal paper, thirteen inches long by eight inches wide, with red marginal lines, and write on only one side of the sheet. The only exception to this rule is a Will, which is sometimes written on both sides of a legal sheet. In New York practise, Court documents may now be written on paper 8 x 10 inches, with marginal lines.

3. Set the right hand red line at 71, and the left marginal stop two spaces from the red line on the left side. Paragraph five spaces in from the margin.

4. In Court documents for use in New York Courts, run an ordinary "box," containing the title, thirty spaces from the left hand margin, using hyphens for the upper and lower lines of the "box," and colons, or right parenthesis marks, for the side. Above this "box" place the name of the Court, as shown in the following pages. An easy way to do this is to write first the name of the Court, centering it between the margin (if at 10) and 40, or (if at 6) 36, then the upper line of hyphens, ending same with a small x, then the name of the plaintiff or plaintiffs, and so on, until all the title has been written; then make the bottom line of hyphens, and then, holding down the shift key (for single keyboard) and the space bar, strike the colons one after the other, turning the carriage back after each with the right hand. Other documents arrange as printed.

5. Begin all legal documents six full spaces from the top of the page.

6. Leave plenty of space for all blanks—half a line to a line for a name, date, or sum of money.

7. Do not write the name of a document on the face thereof, except in Western forms where shown.

8. Write all New York State documents in black ink, on medium weight paper, and for duplicate copies use black carbon.

9. Fasten, with brass staples, each copy of every document to a colored "back," with the top folded over about an inch and a half, and endorse the "back" with the caption, the name of the document, and the name and address of the attorney. If the back furnished for binding the document does not contain an "Admission of Service" printed thereon, it should be added on the typewriter beneath the name and address of the Attorney, in the following words: "Due and timely service of the within document is hereby admitted." Then leave a blank space for the Attorney's name, and the word "Dated," leaving a space for the date to be written in in ink.

10. Use the same capitalization in typewriting the forms as is shown in the examples given in the following pages.

LEGAL FORMS

- A STENOGRAPHER who is preparing to take a position in a law office should familiarize himself with legal forms, and even commit to memory certain portions of some of the documents.

Legal forms comprise two kinds, viz. :

1. Court Documents, *i.e.*, those actually necessary in the trial of a case, and usually known as "Pleadings."
2. Other legal documents, such as Wills, Deeds, Mortgages, and various kinds of Contracts.

COURT DOCUMENTS

THESE consist of Complaints, Answers, Affidavits, Orders, Notices, etc., etc.

In the trial of a case, the first document encountered is the Summons, which, however, is rarely dictated. A printed form is generally used, filled in on the typewriter, and attached to the Complaint.

The next document is the Complaint. In writing the Complaint, as well as all other Court Documents, the first thing to note is the "Caption" with which all such papers begin. This includes the name of the Court in which the case is to be tried, and the Title, comprising the names of the plaintiff and defendant, connected by the word "against." This connecting word is written variously, *against*, *vs.*, *v.*, or *versus*, the last being the most infrequent form, and should be taken down and transcribed as dictated.

1
(COMPLAINT)

Vol. 1

N. Y. SUPREME COURT.

Caption

James T. Ball, :
Plaintiff, :
-against- :
Walter Stephens, :
Defendant. :
X/

Introduction

The plaintiff complains against the defendant in the above entitled action, and alleges :

Allegations

FIRST. That on or about the 24th day of August, 1909, the above named plaintiff loaned to the defendant herein, at his request, the sum of Five hundred Dollars (\$500.), which said sum the defendant promised to pay to said plaintiff on demand, with interest from said 24th day of August, 1909.

SECOND. That on the 17th day of December, 1909, the plaintiff above named duly demanded said sum from the said defendant, but that no part thereof has been paid, and that the said Five hundred Dollars (\$500.), with interest from the 24th day of August, 1909, now remains due and owing from said defendant to said plaintiff.

Prayer

WHEREFORE, this plaintiff demands judgment against the defendant for the sum of Five hundred Dollars (\$500.), with interest thereon from the 24th day of August, 1909, together with the costs of this action.

Plaintiff's Attorneys,
Office and Post-office Address,
No. 31 Nassau Street,
New York, N. Y.

Verification

Venue* STATE OF NEW YORK, :
COUNTY OF NEW YORK. : ss. : †

James T. Ball, being duly sworn, says, that he is the plaintiff in the above entitled action; that the foregoing complaint is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Sworn to before me this :
day of December, 1909. :

* Venue, Place of Trial.

† ss. - Subscribed, to wit, namely.

‡ Jurat, oath.

2

(SUMMONS)

N. Y. SUPREME COURT.

JAMES T. BALL,	} Plaintiff,
vs.	
WALTER STEPHENS,	
Defendant.	

TO THE ABOVE NAMED DEFENDANT :

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys herein within ten days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, December , 1909.

Gastron & Martin,
Plaintiff's Attorneys,
Office and P.O. Address,
31 Nassau Street,
New York City.

After typewriting the Complaint on legal paper, it should be bound, together with the printed Summons properly filled in, as above, in a "back," endorsed as follows :

N. Y. SUPREME COURT.
James T. Ball vs. Walter Stephens
SUMMONS AND COMPLAINT
Gastron & Martin, Plaintiff's Attorneys, 31 Nassau Street, N. Y. City. 'Due and timely service of the within document is hereby admitted. Defendant's Atty. Dated :

To get this endorsement in the right place, turn down the "back" an inch and a half from the top, then fold the lower edge even with the top fold, insert in the machine with the opening to the left as far as it will go, turn up four full spaces, then begin the endorsement 30 spaces from the right hand edge, centering between these points. For example, if the right hand edge comes to 70, begin the endorsement at 40.

All New York Court Documents must be "folioed," *i.e.*, the folios (every hundred words) indicated by placing the folio number in the left-hand margin, thus Fol. 1, Fol. 2, Fol. 3, etc. (See the Complaint on page 13.)

Three copies should be made of a document having but *one* plaintiff and *one* defendant. Add another copy for each additional party to the action.

Page legal work at the *bottom* in the *center*.

¹ These words constitute what is called an "Admission of Service" (see Suggestions), and are usually printed or typewritten on the backs of Court Documents. They should be memorized.

3

(ANSWER TO THE FOREGOING COMPLAINT)

A *Complaint* usually contains only *allegations*.

An *Answer* may contain *allegations*, *denials*, and *admissions*.

N. Y. SUPREME COURT.

JAMES T. BALL, <i>vs.</i> WALTER STEPHENS,	}	Plaintiff, Defendant.
--	---	------------------------------

The defendant, by Henry Hooper, Esq., his attorney, answering the complaint of the plaintiff, alleges :

General Denial { I. That he has no knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph first of said complaint.

Allegation { II. He alleges that on or about the 24th day of August, 1908, he went to the above-named plaintiff and asked him to lend him the sum of Five Hundred Dollars (\$500.), but that the plaintiff declined and refused to give him such a loan, and tendered him the sum of Five Dollars (\$5.00), which said defendant was compelled to accept, being in very needy circumstances at the time.

Admission { III. This defendant admits that at various times the plaintiff has demanded from said defendant this sum of Five Dollars (\$5.00) which the said plaintiff gave to the said defendant on the date hereinbefore named, and he admits also that he declined to return the said Five Dollars (\$5.00) to the said plaintiff in view of the fact that the said Five Dollars (\$5.00) was tendered to the said defendant as a gift, and not as a loan.

Prayer { WHEREFORE, this defendant demands judgment,
 { dismissing the complaint with costs.

Defendant's Attorney,
 Office and Post Office Address,
 18 Pine Street,
 Borough of Manhattan,
 New York City.

(STATE OF NEW YORK,)
) ss. :
 (COUNTY OF NEW YORK.)

Verification { Walter Stephens, being duly sworn, deposes and says,
 { that he is the defendant in the above entitled action ; that
 { the foregoing answer is true to his own knowledge, except as
 { to the matters therein stated to be alleged on information
 { and belief, and that as to those matters he believes it to be
 { true.

Subscribed and sworn to before me }
 this day of 1908. } -----
 (Defendant's Signature.)

Notary Public,
 New York Co., N. Y.

The Answer should be backed and endorsed as directed on page 15, inserting the word " Answer " instead of " Summons and Complaint."

Be careful never to omit the Verification from a Complaint or an Answer. Either of these documents is void without a Verification.

Memorize the *Prayer* and the *Verification* in the *Complaint* ; also the *General Denial*, the *Prayer*, and the *Verification* in the *Answer*.

4

(ANOTHER FORM OF COMPLAINT)

SUPREME COURT OF THE CITY OF
NEW YORK.

WALTER L. DRUMMOND

against

GEORGE W. CARLETON.

The above named plaintiff complains of the defendant and shows to this Court :

THAT the said defendant is justly indebted to the said plaintiff in the sum of Thirty-five hundred Dollars (\$3500.) for money loaned to, paid, laid out and expended for said defendant by this plaintiff at the defendant's request, and for work, labor and services rendered to the said defendant by this plaintiff, and goods, wares and merchandise sold and delivered by the plaintiff to the defendant all during the time previous to January, 1909 ;

THAT no part of the same has been paid, and the same is now due, and the plaintiff demands judgment for Thirty-five hundred Dollars (\$3500.) besides costs.

Plaintiff's Attorney.

(Verification.)

5

(ANOTHER FORM OF ANSWER)

A *Complaint* usually contains only *allegations*.

An *Answer* may contain *allegations*, *denials*, and *admissions*.

SUPREME COURT,
COUNTY OF NEW YORK.

TIMOTHY JENKINS,
vs. Plaintiff,
LAWRENCE WOOD, SIMON R. PRINCE and
HERMAN OSBORNE, composing the Firm of
WOOD, PRINCE & Co.,
Defendants.

The defendants, by Morris Meyer, Esq., their Attorney, answering the complaint of the plaintiff, allege :

General Denial { I. That they have no knowledge or information } Memorize
sufficient to form a belief as to any of the allegations
contained in paragraph first of said complaint.

Allegation { II. They allege that on or about the 15th day of October,
1909, the plaintiff came to the store kept by the said defend-
ants at 384 Sixth Avenue, and demanded that certain goods
be sold to him which were not then, and never have been,
kept on sale by these defendants.

Admission { III. These defendants admit that, upon the rude and
boisterous conduct of the plaintiff creating a disturbance,
they had him forcibly ejected from their premises, but they
deny that any unnecessary force was used in said ejectionment.

WHEREFORE, these defendants demand judgment
dismissing the complaint with costs.

Defendants' Attorney,
Office and Post Office Address,
18 Pine Street,
Borough of Manhattan,
New York City.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss. :

Lawrence Wood, Simon R. Prince, and Herman Osborne,
being each for himself severally duly sworn, do depose and say,
that they are the defendants in the above entitled action ; that
the foregoing answer is true to their own knowledge, except as
to the matters therein stated to be alleged on information and
belief, and that as to those matters they believe it to be true.

Subscribed and sworn to before me }
this day of 1909. }

6

Learn to distinguish and recognize legal documents by their *form*.

Complaints and Answers begin with an *Introduction*, end with a *Prayer*, and have a *Verification* attached.

Affidavits (sworn statements) begin with a *Venue*, and end with a *Jurat*.

(AFFIDAVIT TO OBTAIN AN ORDER REFERRING
THE ISSUES)

(See pages 22, 24.)

SUPREME COURT
COUNTY OF NEW YORK.

ELIAS LYNCH,

Plaintiff,

vs.

MICAH DOYLE,

Defendant.

STATE OF NEW YORK,

COUNTY OF NEW YORK.

SS. :

ELIAS LYNCH, being duly sworn, says :

I. That he is the plaintiff in the above entitled action, and that an issue of fact has been joined therein.

II. That said action is brought to recover for services rendered by deponent for the defendant as his agent in the sale of county rights to manufacture and vend a certain patented device, and also for moneys paid, laid out, and expended by deponent for the defendant, at his request.

III. That the defendant by his answer admits the existence of the agency, but denies that services were rendered by deponent to the extent and of the value set forth in the complaint ; and also sets up a counter-claim for goods alleged to have been sold and delivered to deponent by the defendant during the times mentioned in the complaint, which counter-claim is put in issue by the reply herein.

IV. That the trial of the action will require the examination of a long account on the side of both plaintiff and defendant covering a period of over six years; that the account of the plaintiff consists of more than 75 items; and the defendant's demand as set forth in the bill of particulars served herein consists of more than 25 items.

V. That in view of the length of time necessarily involved in the examination of these accounts, a reference is necessary.

Subscribed and sworn to before me }
this day of November, 1909. }

No Verification is attached to an Affidavit.

Affidavits may be arranged in numbered paragraphs, or in one continuous paragraph, the sentences being set off from one another by semicolons, as in the form on page 28.

An Affidavit may be drawn in the first or the third person (see pages 22, 24).

7

(AFFIDAVIT OF ATTORNEY FOR AN ACCOUNTING
EXECUTOR)

¹SURROGATE'S COURT,
COUNTY OF NEW YORK.

In the Matter
of
The Final Judicial Settlement of the
Account of SAMUEL W. JAMES as
Executor of ROBERT WILSON, Deceased.

CITY AND COUNTY OF NEW YORK, ss. :

John M. Vane, being duly sworn, saith :

That he is one of the Attorneys for the accounting Executor herein, and that the annexed bill of costs contains the items and costs and disbursements to which the accounting Executor deems himself entitled at the time of the settlement of the decree herein for counsel fees and disbursements. That all of the disbursements therein set forth have been actually made by the deponent's firm as the Attorneys for the said Executor, and have been necessary for the purposes of said accounting, and in order to furnish the fullest possible information relative to the accounts to all parties in interest.

Deponent also further saith, that the said accounting Executor, and said firm of Vane & Harris, as his said Attorneys, claim a further allowance of Two hundred and fifty dollars (\$250.), under the provisions of Section 2562 of the Code, namely, for more than twenty-five days occupied in the trial and necessarily occupied in preparing the account of said Executor for settlement and otherwise preparing for the trial. That the number of days and parts of days actually occupied in such preparation of the account for settlement, and preparation for the trial and the hearing of the trial, has been more than forty, as deponent verily believes, but that deponent only makes claim for an allowance for twenty-five days.

¹ *Surrogate*, "In some states of the United States, an officer who presides over the probate of wills and testaments, and over the settlement of estates."

Deponent further saith that amongst the days necessarily occupied as aforesaid, and the time occupied on each day in the rendition of the services, and their nature and extent in detail are as follows :

February	16th	.	.	.	.	.	2	hours
"	17th	.	.	.	.	.	2	"
"	20th	.	.	.	.	.	2	"
"	27th	.	.	.	.	.	2	"
"	28th	.	.	.	.	.	3	"
March	1st	.	.	.	.	.	7	"
"	2nd	.	.	.	.	.	4	"
"	3rd	.	.	.	.	.	2	"
"	5th	.	.	.	.	.	3	"
"	6th	.	.	.	.	.	3	"

Deponent further saith as to the nature and extent of such services, that they involved the preparation of the original petition, the procuring of orders of publication, and the service of a number of the parties in interest by publication; the preparation of an elaborate account showing the expenditure and disbursement of over \$270,000; the putting of said account in legal form and shape; the drawing of decree; consultations with numerous parties interested in said estate, and sundry attendances in Court.

Sworn to before me this)
3rd day of May, 1909.)

Joseph Smith,
Notary Public,
N. Y. County, N. Y.

8

Affidavits are sometimes drawn in the *first* person. Note the following—

(AFFIDAVIT OF AN ACCOUNTANT)
CITY COURT OF NEW YORK.

FLANNAGAN
vs.
DINNEGAN, *et al.*¹

CITY AND COUNTY OF NEW YORK, SS. :

JAMES A. GEARY, being duly sworn, deposes and says :

I am forty-nine years of age, reside in the City of Plainfield, New Jersey, have an office at No. 57 Cedar Street, in New York City, and am a professional accountant and expert. On September 25th, 1905, at the request of Walldridge, Smith & Jones, Attorneys, No. 25 North Avenue, Plainfield, New Jersey, I attended at the office of Runyon, Moody & Co., No. 44 East 6th Street, Plainfield, New Jersey, to confer with William L. Moody, of that firm, and to examine their books of account.

The object of the examination was to ascertain just how the business appeared to stand, as recorded in the books of account, in order to facilitate Mr. Humphrey Davey, of New York City, in reaching a decision as to whether he would become a purchaser of the business and at what price. Mr. Moody and Mr. Runyon, both members of the firm of Runyon, Moody & Co., were present at the said interview. With the consent of said Moody I examined the books of account of the said copartnership of Runyon, Moody & Co., occupying a portion of September 12, also September 14th thereon. I made a written report of my examination to the said Walldridge, Smith & Jones, and submitted therewith a statement of the accounts. A copy of said statement is hereto annexed, marked Exhibit "A," and a copy of the said report is hereto annexed, marked Exhibit "B." Both of said statements were prepared by me, and are in every respect truthful and correct as shown by the said books of said firm. I made an examination of the books of account of the preceding firm of Runyon, Mason & Co. for the purpose of testing their correctness, but I prepared the said report and the said statement from the books as they now stand, upon the assumption that all the entries therein were honestly and fairly made.

Subscribed and sworn to before me }
this day of August, 1909. }

The two Exhibits mentioned in the foregoing Affidavit should be bound in the same cover with the latter.

¹ *et al.* — and another.

9

Though Affidavits are largely used in the trial of suits, they may be employed outside of Court. When so used they have no caption or title, merely beginning with the *venue*.

(AFFIDAVIT OF MORTGAGOR)

CITY AND COUNTY OF NEW YORK, SS. :

THOMAS FLYNN, being duly sworn, says : I am the mortgagor named in the annexed mortgage, and I reside at No. 205 East 25th Street, in the City of New York.

I am the sole owner of all the Chattels and Fixtures named in the Schedule annexed to the said mortgage and now in my saloon in the premises known as No. 10 Division Street.

That the said Chattels and Fixtures are free and clear of all manner of liens and incumbrances, and that no other person or persons have any right, title or interest in the said Chattels and Fixtures.

That no levy has been made upon the said Chattels and Fixtures by any Marshal or Sheriff of the said City and County of New York by virtue of any writ of execution or attachment.

That this affidavit is made for the benefit of Steinam & Miller, who will, relying upon the faith of the representations herein contained, accept the said mortgage as security of my indebtedness to them in the sum of Five hundred dollars (\$500.).

Sworn to before me this }
day of July, 1909. }

Notary Public, N. Y. Co.

10

(AFFIDAVIT REQUESTING LEAVE TO AMEND
COMPLAINT)SUPREME COURT
OF THE CITY OF NEW YORK.

MARY A. MOORE and ALBERT H. MOORE, her husband, <i>against</i> JOHN WILLIAMSON, Defendant.	Plaintiffs, }
--	----------------------

CITY AND COUNTY OF NEW YORK, SS. :

JAMES BALDWIN, being duly sworn, deposes and says :

I am the attorney for the plaintiffs herein. On or about the day of March, 1910, I drafted the complaint in the above entitled action, a copy of which has been duly filed with the clerk of this Court, and served upon the attorney for the defendant herein.

At the time of drawing such complaint, we had information which we verily believed to be accurate concerning the allegations contained in the First Paragraph of said complaint. These allegations have since been found to be somewhat incorrect, and while not materially affecting the result of the action, we deem it necessary to have the complaint conform in all respects to the entire truth ; and it is therefore desired that an order be issued granting permission to the plaintiffs to so amend their complaint as to be in all respects accurate and true.

Sworn to before me this }
day of March, 1910. }

II

Affidavits frequently accompany Orders of the Court directing a certain action to be taken. In such cases the Affidavit and Order are bound together in the same back, the Order coming first.

(SPECIAL TERM ORDER)

At a Special Term of the Supreme Court of
the City and County of New York, held
at the County Court House, in said City,
this day of March, 1910.

PRESENT :

Hon. -----

Justice.

MARY A. MOORE and ALBERT H. MOORE, her husband, <i>against</i> Plaintiffs, JOHN WILLIAMSON, Defendant.
--

Upon reading the annexed affidavit of James Baldwin, attorney for the plaintiffs herein, and upon all the papers in this action, it is

ORDERED that the plaintiffs have ten days in which to amend their complaint, as requested in said affidavit, upon payment of Ten Dollars, cost of filing same.

This Order to be bound up in the same back with the Affidavit, and endorsed with the title and the words, "AFFIDAVIT AND ORDER."

12

(AFFIDAVIT FOR A COMMISSION TO EXAMINE A
WITNESS WITHOUT THE STATE ON
INTERROGATORIES)

N. Y. SUPREME COURT.

WILLIAM S. JACKSON,	}
Plaintiff,	
<i>against</i>	
ROGER BLOODGOOD,	
Defendant.	

STATE OF NEW YORK,	}	SS. :
COUNTY OF NEW YORK.		

ROGER BLOODGOOD, being duly sworn, says, that he is the defendant in the above entitled action ; that the place of trial specified in the summons and complaint therein is the county of New York ; that an issue of fact was joined therein on the 29th day of September, 1909, and has not been tried ; that the testimony of James Knight is material to deponent in the defense of this action ; that the said James Knight is not a resident of, or within, this State, but resides at Chicago, in the State of Illinois ; that deponent has fully and fairly stated the case to Jefferson White, Esq., deponent's counsel in this action, who resides at the City of New York, Borough of Manhattan, and that deponent is advised by his said counsel, and verily believes, that he has a good and substantial defense upon the merits ; that deponent has also stated to his said counsel the facts which he expects to prove by the said James Knight, and that deponent is advised by his said counsel after such statement made, and verily believes, that the testimony of the said James Knight is material to deponent in the defense of this action.

Sworn to before me this	}
day of , 1909.	

13

(ORDER FOR A COMMISSION TO EXAMINE A WITNESS
ON INTERROGATORIES)

This Order accompanies, and is bound up with, the foregoing
Affidavit.

N. Y. SUPREME COURT.

WILLIAM S. JACKSON, <i>against</i> Plaintiff, ROGER BLOODGOOD, Defendant.
--

On reading and filing the affidavit of Roger Bloodgood, dated the day of , making satisfactory proof that the testimony of James Knight, a witness not within this State, is material to the defendant in the defense of the above entitled action, and on the pleadings and proceedings in said action, and

On Motion of Jefferson White, Esq., of counsel for the defendant, after hearing John Spencer, Esq., of counsel for the plaintiff,

ORDERED, that a commission issue out of and under the seal of this Court, directed to Lincoln Taylor, Esq., of Chicago, Illinois, authorizing him to examine the said James Knight under oath, upon interrogatories annexed thereto, to take and certify the deposition of said witness, and to return the same and the commission according to the directions given therein or therewith.

AND IT IS FURTHER ORDERED, that the trial of this action be stayed until the return of said commission ; and that the defendant pay to the plaintiff \$10 as the cost of this motion.

(Judge's Signature.)

14

(COMMISSION TO EXAMINE WITNESS UPON
INTERROGATORIES)

THE PEOPLE OF THE STATE OF NEW YORK,

To Lincoln Taylor, Esq., of Chicago, Ill.

GREETING :

KNOW Ye, that we, with full faith in your prudence and fidelity, have appointed you commissioner, and by these presents do authorize you to examine James Knight, of Chicago, State of Illinois, as a witness in a cause pending in our Supreme Court, wherein William S. Jackson is plaintiff, and Roger Bloodgood is defendant, in behalf of the defendant, under oath, upon the interrogatories annexed to this commission ; to take and certify the deposition of such witness ; and to return the same and this commission according to the directions herewith given.

WITNESS, Hon.

one of the

Justices of our Supreme Court, (¹L. S.) at
the day of , 1909.

(Signature of Attorney.)

(Signature of Clerk.)

¹ L.S.—Place of the Seal.

15

(INTERROGATORIES TO BE ANNEXED TO THE
FOREGOING COMMISSION)

N. Y. SUPREME COURT.

WILLIAM S. JACKSON,	} Plaintiff,
<i>against</i>	
ROGER BLOODGOOD,	
Defendant.	

INTERROGATORIES to be administered to James Knight, of Chicago, a witness to be examined under the annexed commission, on behalf of the defendant in the above entitled action.

First Interrogatory: What is your name, age, occupation, and place of residence ?

Second Interrogatory: Do you know the defendant in this action, and if so, how long have you known him ?

Third Interrogatory: Do you know Thomas Rogers, and if so, do you know under what firm name he does business ?

Fourth Interrogatory: When and where did you first meet Thomas Rogers ?

Fifth Interrogatory: Did you, at the time and place mentioned in your last answer, take part in any conversation with the said Thomas Rogers, and if so, was there any person present at such conversation ?

Sixth Interrogatory: If, in answer to the last interrogatory, you say that you did engage or take part in a conversation with the said Thomas Rogers, please state what was said by him and you, and by any other person who was present at such conversation, and also state what took place at the time of such conversation.

Lastly: Do you know anything concerning the matter in question that may tend to the benefit and advantage of the defendant ? If yea, declare the same fully and at large, as if you had been particularly interrogated concerning the same.

(Signature of Attorney.)

16

(CROSS-INTERROGATORIES TO BE ATTACHED TO
THE FOREGOING INTERROGATORIES)

First Cross-Interrogatory : If, in answer to the First Interrogatory, you state that you live in the City of Chicago, State of Illinois, please say how long you have lived there, and if you were a resident of Chicago prior to the commencement of this action.

Second Cross-Interrogatory : If, in answer to the Second Interrogatory, you state that you know the defendant in this action, please state where and under what circumstances you first met him, and how intimately you have been acquainted with him.

Third Cross-Interrogatory : If, in answer to the Third Interrogatory, you state that you know Thomas Rogers, please give a full and detailed account of the circumstances under which you first met the said Rogers, and what business relations you have had with him.

Fourth Cross-Interrogatory : If, in answer to the Fifth Interrogatory, you state that you did, at the time and place mentioned in your answer to the Fourth Interrogatory, take part in any conversation with the said Thomas Rogers, please give the names of all persons present at such conversation, and give, so far as you can remember, any statements made by them to you, and the subject of said conversation.

Fifth Cross-Interrogatory : If, in answer to the last Interrogatory, you state that you do not know anything further that may tend to the benefit and advantage of the defendant, kindly state what you may know that you consider of benefit and advantage to the plaintiff in this action.

(Signature of Plaintiff's Attorney.)

17

DEPOSITION OF JAMES KNIGHT

Based upon Interrogatories and Cross-Interrogatories
administered in the matter at issue between
William S. Jackson and Roger Bloodgood.

N. Y. SUPREME COURT.

WILLIAM S. JACKSON,	} Plaintiff,
<i>against</i>	
ROGER BLOODGOOD,	
Defendant.	

DEPOSITION OF JAMES KNIGHT

CITY OF CHICAGO,	} ss. :
COUNTY OF COOK,	
STATE OF ILLINOIS.	

JAMES KNIGHT, a witness summoned on behalf of the defendant in the above entitled action, having been first duly sworn in answer to the Interrogatories and Cross-Interrogatories attached herewith, deposeeth as follows :

To the First Interrogatory witness deposeeth and saith :

My name is James Knight, I am twenty-nine years of age, my occupation is that of book-keeper, and I live at 99 East 47th Street, Chicago, Illinois.

To the Second Interrogatory witness deposeeth and saith :

I know the defendant in this action, and have known him for about six years.

To the Third Interrogatory witness deposeeth and saith :

I also know Thomas Rogers, and I believe he does business under the firm name of Rogers Brothers.

To the Fourth Interrogatory witness deposeeth and saith :

I first met Thomas Rogers in the summer of 1904 at Salt Lake City.

To the Fifth Interrogatory witness deposeeth and saith :

I did engage in conversation with Thomas Rogers at the time and place mentioned in my last answer, but there was no one else present at the time.

To the Sixth Interrogatory witness deposeeth and saith :

I do not remember what was said by said Thomas Rogers or by myself at such conversation, and, as I have already stated

that there was no one else present, I cannot therefore state what was said by any other person at that time. As to what took place, I would state that after having talked together for some time, we went down Brigham Young Avenue and had a drink together.

To the last Interrogatory witness deposeth and saith :

I have already stated all that I know concerning the matter in question.

ANSWER TO CROSS-INTERROGATORIES

To the First Cross-Interrogatory witness deposeth and saith :

I have lived in Chicago for about ten years, and was a resident of that city prior to the commencement of this action.

To the Second Cross-Interrogatory witness deposeth and saith :

I first met the defendant in this action about fourteen years ago at my sister's wedding in Buffalo, New York, and at that time I was in partnership with him.

To the Third Cross-Interrogatory witness deposeth and saith :

I have already stated all I remember of the circumstances under which I first met Thomas Rogers. I never have had any business relations with him.

To the Fourth Cross-Interrogatory witness deposeth and saith :

There were no other persons present at the time and place of my first conversation with Thomas Rogers.

To the Fifth Cross-Interrogatory witness [deposeth and saith :

I know of nothing whatever that may tend to the benefit or advantage of the plaintiff in this action.

Subscribed and sworn to before me,
a Commissioner of Deeds in and
for the County of Cook, State of
Illinois, this day of 1909.)

(Signature of witness.)

18

(SPECIAL TERM ORDER)

In New York County all Special Term Orders begin with a "Hanging Indenture." They may thus be easily distinguished from Stated Term Orders, which begin with the Caption.

Hanging
Indenture { At a Special Term of the Supreme Court,
held at the County Court House in the
City of New York, County of New York,
on the day of , 1909.

PRESENT :

Hon. -----

Justice.

WALTER BLISS,

Plaintiff,

vs.

CHARLES BRISK,

Defendant.

On reading and filing the affidavit of Charles Brisk, dated the day of , 1909, making satisfactory proof that one or more witnesses not within this State are material and necessary in the defense of this action, and on the pleadings and proceedings in this action, and on proof of due service of the annexed notice of motion, with a copy of said affidavit, and after hearing Paul James, Esq., of counsel for the defense, and Richard Levy, Esq., of counsel for the prosecution,

NOW, on motion of Alexander Hudson, Esq., counsel for the defense,

ORDERED, that the deposition of each and every witness who may be produced by either party to this action within days from the date hereof, at a time and at a place within the State of New Jersey to be specified in a written notice served on the part of the defense upon the attorney for the plaintiff, at least days before the examination, be taken before Hon. Gedney G. Haynes, of the City of Newark, State of New Jersey, aforesaid, upon oral questions to be put to the witness when produced ; that such depositions be taken within days from the date hereof, and that the said Gedney G. Haynes take and certify the deposition of each witness, and return the same with this order pursuant to law.

(Signature of Presiding Justice.)

19

NOTICES

(NOTICE OF TRIAL)

NEW YORK SUPREME COURT.

JULIA HACKETT,	} Plaintiff,	
<i>vs.</i>		
FRANK R. MERRILL <i>et al.</i> ,		} Defendants

SIR :

TAKE NOTICE that this action will be brought to trial at the next term of this court to be held at the County Court House in the City of New York, in the County of New York, Borough of Manhattan, on the 12th day of January, 1910.

Yours, etc.,

Tunison Blake,
Attorney for Plaintiff,
Office and P.O. Address,
29 Broadway, N. Y. City.

To

Patrick Cowan, Esq.,
Attorney for the Defendants.

20

(NOTICE TO PRODUCE PAPERS AT TRIAL)

NEW YORK SUPREME COURT.

MARY CLAYTON,	} Plaintiff,
<i>vs.</i>	
SIDNEY CUTTING,	
	Defendant.

SIR :

PLEASE TAKE NOTICE that you are hereby required to produce upon the trial of this action a certain Deed from Sidney Cutting to Mary Clayton, dated May 15th, 1904, and that in case of your failure so to do, the plaintiff will give secondary evidence of the contents thereof.

Plaintiff's Attorney.

New York, November 20th, 1909.

To

Sidney Cutting, Defendant, and
Edward Davis, Attorney for the Defendant.

21

(PETITION FOR SETTLEMENT OF ESTATE)

SURROGATE'S COURT.

In the Matter
of the
Disposition
of the
Real Estate of JOHN BROWN,
Deceased.

TO THE SURROGATE'S COURT OF THE
COUNTY OF WESTCHESTER.

The Petition of Mary Brown respectfully shows and states :

FIRST. That your petitioner is the original petitioner in this proceeding, and is the Administratrix of the goods, chattels, and credits of John Brown, deceased.

SECOND. That this proceeding is now still pending in this Court, and the proceeds of the sale directed by this Court, by decree dated December 19th, 1908, have not yet been distributed, but notice of the disposition of the proceeds has been given and is now being published according to law, and according to an order of this Court made for that purpose.

THIRD. That there is a balance still in the hands of the County Treasurer, awaiting an order of this Court, and that the said balance is available for the purposes of this proceeding, to pay the debts of the said John Brown, deceased, under section 245 of the Code of Civil Procedure.

WHEREFORE, your petitioner prays an order of this Court, directing the said Treasurer of the County of Westchester to pay over to Samuel Brown whatever balance he now holds to the credit of said action in the Surrogate's Court, wherein Samuel Brown was plaintiff and John Brown defendant, and that the said Samuel Brown hold the said balance subject to the decree of distribution of this Court, and that this petitioner may have such other or further relief as may be just.

Note that a Petition has a verification attached, the same as a Complaint and Answer.

22

(CONSENT TO RECEIVE A GROSS SUM IN LIEU OF DOWER)

¹ SURROGATE'S COURT,
COUNTY OF NEW YORK.

HANNAH R. ELLIS,	}	
<i>against</i>		Plaintiff,
MARK GIBSON and RALPH COX,		
as Executors of the Estate of		
JOHN ELLIS, deceased,		Defendants.

I, Hannah Ellis, the plaintiff in the above entitled action, pursuant to section 1617 of the Code of Civil Procedure, do hereby consent to accept a gross sum to be ascertained according to law, in full satisfaction and discharge of my right of dower² in the real property described in the complaint in this action.

Dated, New York, October 12th, 1909.

(Signature of Plaintiff.)

Acknowledgment { ³STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.

On this twelfth day of October, in the year 1909, before me, the subscriber, personally came Hannah Ellis, to me known, and known to me to be the person described in and who executed the within instrument, and acknowledged that she executed the same.

(Signature of Officer.)

¹ *Surrogate*, "In some states of the United States an officer who presides over the probate of wills and testaments and over the settlement of estates." Corresponds to Probate Judge in other states.

² *Dower*, "That portion of the real estate of a man which his widow enjoys during her life, or to which a woman is entitled after the death of her husband." Do not confuse with *dowry* (see page 152).

³ The acknowledgment should be memorized. Observe that an acknowledgment has no *jurat*.

23

(EXECUTOR'S OATH)

CITY, COUNTY AND STATE OF NEW YORK, ss. :

SURROGATE'S COURT,
BOROUGH OF BROOKLYN.

In the Matter
of
Proving the Last Will and Testament of
ARTHUR GREY, deceased,
as a Will of real and personal property.

I, SPENCER W. THOMPSON, an executor named in the last Will and Testament of Arthur Grey, late of Garden City, Long Island, deceased, do depose and say :

That I am a resident of No. 27 Saint Mark's Place, in the City of Brooklyn, State of New York, that I am over twenty-one years of age, and that I will well, faithfully, and honestly discharge the duties of Executor of said last Will and Testament.

Sworn to before me this }
day of September, 1909 }

24

INTRODUCING EVIDENCE

After the plaintiff's, or defendant's, counsel has opened his case, he proceeds to prove the facts alleged by means of documentary evidence, or oral testimony, or both.

In the case of oral testimony, the witness must be placed upon the witness stand and duly sworn, before he is permitted to testify.

The taking of the testimony of witnesses by a law stenographer is often done in his employer's office, or in the office of a Referee before whom his employer is conducting a case.

Not all cases are tried in open court. When it is found that a protracted investigation will be necessary, it is often agreed by counsel that some reliable and competent attorney, not in any way connected with the case, may be appointed by the Court and named as the *Referee* to hear and determine the issues involved, and report his decision after all the evidence has been submitted. (See page 59, "Judgment for Defendant upon Report of a Referee.") A case tried in this manner is termed a *Reference*.

Occasionally a Reference is ordered by the Court of its own motion, or upon the application of one party without the consent of the other.

At a Reference witnesses are examined and arguments heard, as well as motions decided, the same as in a Court Room.

At the first hearing, the appearances of the counsel for plaintiff and defendant must be noted by the stenographer, as well as the name and presence of the Referee; also the time and date of the session, as shown below.

(FORM OF HEADING FOR THE FIRST PAGE OF THE
FIRST HEARING OF A REFERENCE)

NEW YORK SUPREME COURT.

JOHN P. GREEN *et al.*,
vs.
ALBERT MCKINNEY, JR.

BEFORE
George Harris, Esq.,
Referee.

New York, April 15th, 1910.

2.45 P.M.

APPEARANCES :

Messrs. Smith and Jones, for the Plaintiffs, W. C. Smith, Esq.,
of Counsel.

Messrs. Williams and Wallace, for the Defendant, L. C. Lyman,
Esq., of Counsel.

The Referee states that he has taken the usual oath.

FREDERICK TAYLOR, sworn as a witness on behalf of the
plaintiffs, testifies as follows :

DIRECT EXAMINATION.

BY MR. SMITH :

(Here follows the testimony.)

At subsequent sessions the full caption need not appear. Simply write
the plaintiff's and defendant's name, with *vs.* between.

At all sessions after the first, only the *presence*, and not the *appearance*,
of the respective counsel is noted.

For example :

GREEN <i>vs.</i> McKINNEY.

New York,
 April 18th, 1910.
 2.30 P.M.

PRESENT :

The Referee and Respective Counsel (if all are in attendance, otherwise name each one who is present, thus) :

PRESENT :

MR. SMITH, of Counsel for Plaintiff.

MR. WILLIAMS, of Counsel for Defendant.

**DIRECT EXAMINATION OF MR. TAYLOR, continued.
 BY MR. SMITH :**

(Here insert testimony.)

NOTE.—When taking testimony, the stenographer will save time if, instead of writing "Question" and "Answer" in shorthand each time, he will write the words of the question clear across the page of his notebook, and the *answer* only *half way* across, thus :

What is your name ?

John Smith.

Do you know the defendant in this action, Mr. Jones ?

Yes, sir, he was a partner of my father for a great many years, etc.

Witnesses have a great habit of answering a question in the exact words in which it was asked. For instance, instead of saying merely "Yes, sir" to the question "Is your name John Smith?" a witness will be very likely to say "My name is John Smith." In such cases much time will be saved by the stenographer if he will *indicate* the answer (instead of actually writing it) by means of a long dash, thus :

Were you a member of that firm ?

Yes, sir.

Of the firm of Jones & Brown ?

 (Meaning the answer to be, "Of the firm of Jones & Brown.")

You are a resident of the City and County of New York ?

I am _____
 (Meaning the answer to be, "I am a resident of the City and County of New York.")

25

TRANSCRIBING TESTIMONY ON THE MACHINE

Testimony may be written on long paper, but is more commonly written on square paper, which is ruled not only down the sides, but across the top and bottom. Everything but the paging and the Q's and A's must be kept within the red lines. Number the pages in the *upper right-hand corner*, all the sessions continuously and consecutively, then bind in a regular testimony cover and index carefully, showing where each witness's testimony direct, cross, redirect, etc., begins.

There are two ways of writing the answers. Some prefer them written so as to begin at the margin each time, with the letter A, as well as the letter Q, outside the margin. This is called "running the answers out." Others like the answers to follow the questions directly. This is called "running the answers in." The first method is shown on page 45 (Taylor's testimony); the second on page 48 (Raymond's testimony). It is well to learn to write testimony both ways. No period should be placed after "Q" or "A," the red line taking the place of a period.

(TESTIMONY OF MR. TAYLOR)

Running the Answers out.

DIRECT EXAMINATION OF MR. TAYLOR, continued :

BY MR. SMITH :

Q Resuming where we left off, Mr. Taylor, allow me to ask, was that transaction kept quiet, or was it a public matter ?

A No, that was kept quiet.

Q Is it required that all your corporate members should hold a bond ?

Objected to. Objection overruled. Exception.

A No, sir.

Q There are some of the corporate members who do not ?

A Yes, and some of the non-corporate members who do hold the bonds. We only draw the line as to who shall become members.

Q As to who shall have the power to vote ?

A As to who shall have the power to vote. (Write this answer in shorthand as directed on page 44.)

Q Then material men holding bonds have no voice nor vote in the management of that building ?

A None whatever.

Q Do you have a bondholder's association ?

A We have not.

- Q Then you exclude a part of the owners of the bonds from any control of the building ?
- A Yes, sir.
- Q Corporate members that paid in this initiation fee of \$200 are not responsible for any loss in the business for failure of this enterprise any further than the money they paid in ?
- A That's all.
- Q Limited liability ?
- Defendant's counsel objects to the question.
Objection sustained. Exception.
- Q In case it was found that a majority of the corporate members would not agree to this investment, is it practicable to start a building investment company in the Exchange, composed of a limited number, for the purpose of putting up a building ?
- A I think that is perfectly feasible, and perfectly just and right. I think they would have a perfect right to do just as they please about that matter.
- Q How was this \$20,000 that you found yourself in possession of accumulated ? That was the result of the purchase of certificates of membership ?
- A Yes.
- Q But you have expenses ?
- A Yes, but we made money every year over and above our expenses.
- Q Your dues were more than sufficient to pay expenses ?
- A Our dues were more than sufficient to pay expenses.
- Q Do the \$50 dues now pay all your expenses of operating the building ?
- A Yes, and more.
- Q Is any of the money collected for dues used, for instance, to pay the interest on the bonds or apply it on the debt ?
- A It goes into a general fund.
- Q And of course each corporate member is an owner equally in the building ?
- A Yes, sir.
- Q You issued bonds to \$100,000 ?
- A Yes, sir.
- Q Supposing that property is worth, in the course of six years, \$200,000 ?
- A Then our certificates of membership would increase 100 %.
- Q That is not the point. A material man holding some of these bonds, holds a \$1,000 bond, and the property is worth \$200,000. Is his bond only worth \$1,000 ?
- A Certainly. That is the nature of a bond all the time.
- Q The property appreciates, but the bond never appreciates ?

- A The bond does not, but the certificate of membership does.
Q But suppose he can't hold a certificate of membership ?
A The bond is his bond. He only puts that in as an investment.
He gets his interest on it.
Q The increment to the property inures wholly to the benefit of the corporate members ?
A Yes, sir.

CROSS EXAMINATION BY MR. WALLACE :

- Q Do I understand you to say that the corporate members are stockholders and the bondholders are but the backing of the institution and get their dividends on the bonds ?
A. Yes. The corporate members are the stockholders and the bondholders are the backing behind the stockholders. They put their money up for a certain percentage of dividends each year. That property, for instance, cost \$100,000. If next year, by some extraordinary coincidence, that property should advance in value to \$200,000, a certificate of membership which to-day is worth \$250, would be worth \$500 then.
Q The certificate of membership bears the same relation as a certificate of stock ?
A Yes, sir.
Q What is the revenue from your investment at present ?
A That would be rather difficult to give.
Q Give it approximately, so that we can see what interest the bonds would pay ?
A The interest is fixed.

ADJOURNED to Monday, April 24th, 1910, at 2.30 P.M.

26

(TESTIMONY OF HENRY RAYMOND.)

NEW YORK SUPREME COURT.

HENRY MACY <i>et al.</i> ,	}	BEFORE Henry R. Taylor, Esq., Referee.
Plaintiffs,		
<i>against</i>		
CHARLES STEWART,		
Defendant.		

New York,
Tuesday, March 23rd, 1910.
2 P.M.

APPEARANCES :

JOHN R. BRADY, Esq., Attorney for Plaintiffs.

MESSRS. LEE & JACKSON, Attorneys for Defendant.

Oath of Referee waived by consent of both parties.

HENRY RAYMOND, a witness called on behalf of the plaintiffs, being duly sworn, testified as follows :

DIRECT EXAMINATION.

BY MR. BRADY :

- Q You are the book-keeper of Messrs Macy & Co., the plaintiffs ?
A Yes, sir, I was.
- Q Did you ever see Mr. Stewart, the defendant herein, in Mr. Macy's shop ? A I have seen Mr. Stewart before.
- Q In Mr. Macy's shop ? A In Mr. Macy's shop.
- Q Did you hear any conversation about these sashes that are spoken of ? A I did.
- Q What was said ? A Mr. Stewart sent us a letter requesting that the sashes should be sent up, that they were needed. Mr. Macy then said, " I will have nothing to do with these parties."
- Q Did Mr. Macy tell Mr. Stewart this, that you were telling just now ? A Yes, sir.

CROSS EXAMINATION.

BY MR. JACKSON :

- Q You were asked a moment ago if Mr. Macy said anything to Mr. Stewart about the financial responsibility of Palmer & Smith. A Nothing more than that.
- Q I understood you to state that he had not said anything in your presence ? A Only that he did not consider them responsible enough for this amount.
- Q When was this ? That was after the contract had been made ? A Certainly.

BY PLAINTIFF'S COUNSEL :

- Q Was this before the sash was delivered ? A No, sir, not before the sash was delivered.

BY DEFENDANT'S COUNSEL :

- Q Not before the sash was delivered ? A No, sir, the sashes had not been delivered at that time.

BY PLAINTIFF'S COUNSEL :

- Q Were you present after the note was protested, when Mr. Stewart came there to the store ? A I was.

ADJOURNED to Thursday, March 28th, 1910, at 2 P.M.

27

(BILL OF COSTS)

NEW YORK SUPREME COURT,
CITY AND COUNTY OF NEW YORK.

JOHN ALLEN *et al.*,
against
DAVID R. LAWRENCE *et al.*

Costs of Plaintiffs.

Costs

Costs before Notice of Trial	\$15.00
„ after „ „	15.00
Additional Defendants served	4.00
Trial Fees, Issue of Facts.	30.00
Allowance by Statute	60.00
„ „ Court 5 per cent. on \$600	30.00
Motion	20.00
Appointment of Guardian of Infant Defendant	10.00
Examination of Party before Trial	10.00
Term Fees	50.00

\$244.00

DISBURSEMENTS

Clerk's Fees on Trial	\$1.00
„ „ Entering Judgment . . . . .	.50
Affidavits and Acknowledgments	1.50
Serving Copies Summons and Complaints	5.00
Satisfaction Piece . . . . .	.25
Transcripts and Filing . . . . .	.12
Certified Copy Judgment . . . . .	.50
Jury Fees	12.00
Sheriff's Fees on Execution . . . . .	.72
Extract from Minutes . . . . .	.10
Filing Notes of Issue	4.50

ATTENDANCE OF FOLLOWING WITNESSES

William Truax, 3 days	1.50
John O'Brien, 4 days	2.00

\$29.69

Costs	\$244.00
Disbursements	29.69

\$273.69

CITY AND COUNTY OF NEW YORK, SS. :

Edward Dugro, being duly sworn, says that he is the Attorney for the plaintiffs in the above entitled action, and the foregoing disbursements have been made in said action, or may be necessarily made or incurred therein.

Sworn to before me this }
23rd day of May, 1910. }

Edward Dugro.

John Riley,
Notary Public,
New York City.

(ENDORSEMENT FOR FOREGOING BILL OF COSTS)

(Turn up four full spaces from top edge.)
(Center between 40 and 70.)

NEW YORK SUPREME COURT

JOHN ALLEN *et al.*,
against
DAVID R. LAWRENCE *et al.*

, BILL OF COSTS
And Notice of Adjustment.

Edward Dugro,
Attorney for Plaintiffs,
179 Broadway,
New York City.

Sirs :

TAKE NOTICE, That I shall present a Bill of Costs of which the within is a copy, to the Clerk of the City and County of New York, for adjustment at his office in the County Court House in the City of New York on the 27th day of May, 1910. at 10 o'clock in the forenoon of that day.

Dated, New York, May 23rd, 1910.

Yours, etc.,

Edward Dugro,
Atty. for Plaintiffs,
179 Broadway,
N.Y. City.

To Peter Cook, Esq.,
Atty. for Defendants,
13 Cliff Street,
N.Y. City.

Due service of a copy of the within Bill of Costs and Notice is hereby admitted.

New York, May 23rd, 1910.

Defendants' Atty.

28

(BRIEF)

"A Brief is a concise statement in writing of the law and authorities relied upon in trying a cause."

SUPREME COURT,
CITY AND COUNTY OF NEW YORK.

CLARENCE H. JONES,

Plaintiff,

vs.

WILLIAM BROWN JOHNSON,

Defendant.

BRIEF FOR DEFENDANT

STATEMENT

This action was commenced by the service of a summons and complaint on the 23rd day of October, 1908, by the above-named plaintiff upon the above-named defendant. The defendant appeared on the 7th day of November, 1908; served his answer to the said complaint, and interposed several counter claims thereto. An amended complaint was served on the 8th day of November, 1908, and on the 13th day of November, 1908, defendant served his answer to said amended complaint.

POINTS

I

All the counter claims interposed are sufficient in law upon the face thereof.

An examination of the counter claims shows that each one alleges a contract, which is the subject matter of this action, as the basis for it, and the breach of that contract on the part of the plaintiff.

II

It is apparent on the face of the counter claims herein that all of them are of the character specified in Sec. 601 of the Code of Civil Procedure, and arise out of the contract or transaction set forth in the Complaint.

Said section 601 of the Code of Civil Procedure provides, among other things, that, "The counter claim must be one of "the following causes against the plaintiff, and in favor of the

"defendant. Second: In an action on contract, any other cause of action on contract existing at the commencement of the action."

The counter claims interposed herein existed in favor of the defendant, against the plaintiff, at the time the action was commenced, and long prior thereto, and they belonged to the defendant at the commencement of the action.

¹ Chambers vs. Lewis, 13 Abb. Pr., 210, 213.

Chambers vs. Cagneif, 32 N.Y. Supra, 362.

III

It is apparent on the face of the answer that the facts averred constitute a defense or counter claim to the Plaintiff's cause of action, therefore the objection raised by demurrer for insufficiency is bad.

IV

It is submitted that upon the law and upon the facts, judgment should be given to defendant with costs taxed to plaintiff.

Franklin & Williams,
Attorneys for Defendant,
18 Wall Street,
New York City.

¹ These are citations of authorities.

29

(OPINION)

"The formal decision or expression of views of a judge."

This is a case on appeal, therefore each line must be numbered, as shown.

FIRST DEPARTMENT,

GENERAL TERM.

PEARCE BARNES, as Receiver, etc.,
Respondent,

against

JOSEPH D. JONES and others,
Appellants.

NOAH DAVIS,
Presiding Justice ;
JOHN R. BRADY,
CHARLES DANIELS
J.J.

APPEAL

from an Order denying a motion made to compel the plaintiff to make his complaint more definite and certain, and to elect between inconsistent cause, etc.

Stern & Ames, for Appellants.

Thomas G. Evans, for Respondent.

C. DANIELS, J.

The complaint is in the form known as a creditors' bill to reach and apply property belonging to the debtors to the payment of two judgments recovered against them upon which execution has been issued and returned unsatisfied. It shows the commencement and prosecution of supplementary proceedings in which a Receiver was appointed of the property and effects of the judgment debtors, and that the plaintiff is the successor of that Receiver. By the succeeding allegations the causes of action upon which the judgment was recovered set forth that the judgment debtors were partners in business when such demands accrued against them, and upon a dissolution of their copartnership, the defendant, Jones, who was one of the partners, took the greater part of the assets of the firm, and by a written agreement with his copartner, assumed and agreed to pay the debts and liabilities of the firm. That instead of doing that, he, together with two other persons, formed a corporation under the manufacturing laws of the State to carry

1 on the same business as had been transacted by the firm,
2 and that the assets placed in his hands were transferred to
3 the corporation after its formation, and used in carrying on
4 a profitable business by it. The capital of the corporation
5 is stated to have been fixed at the sum of \$30,000, and
6 \$10,000 of the capital stock was issued to the wife of the
7 defendant, Jones, at his instance, and without any actual
8 consideration parted with by her.

9
10 The transfer of the assets of the firm to the corporation
11 as well as the stock issued by it to the wife of the defendant,
12 Jones, is alleged to have been with intent to delay and
13 defraud the creditors of the preceding copartnership, and
14 for that reason it is claimed that the title of the wife of Jones
15 to this stock should be vacated and set aside, and its proceeds
16 applied to the payment of the judgment. This is the
17 substance of the complaint, although the facts are more
18 clearly set forth and with greater detail in it. A perusal
19 of the complaint produces the conviction that no misappre-
20 hension whatever could arise as to the scope of the action,
21 the facts upon which it has been based, or the relief intended
22 to be secured by it.

23
24 The allegations are clear and distinct, and free from all
25 obscurity, and no difficulty stands in the way of fully
26 understanding the claims inserted in it. In fact, it may
27 well be said to have been drawn upon a clear, legal, and
28 logical theory, plainly, precisely, and intelligently set forth,
29 more so certainly than pleadings of this nature usually are.
30 The law has provided for an application to make a pleading
31 more definite and certain, only when its precise meaning or
32 application is not apparent.

33

34 Code of Civil Procedure, 546.

35

36 This is not a pleading of that nature, for the allegations
37 are definite and certain, and their precise meaning is entirely
38 evident.

39

40 While it is alleged that all the assets of the preceding firm
41 were transferred to the corporation with the intent of
42 hindering, delaying and defrauding the creditors of the firm,

1 the only relief claimed by reason of this circumstance is
2 that the \$10,000 of stock issued to the wife of the partner
3 who had undertaken to pay the firm's debts, should be used
4 and appropriated for the payment of the two judgments
5 recovered by the creditors at whose instance the Receiver
6 was appointed. There consequently was but one cause of
7 action or one subject matter to be affected by these general
8 allegations inserted in the complaint. The claim of the
9 Receiver, upon the facts as they have been stated, might
10 very well have been extended ; but as this stock or its
11 proceeds would probably be sufficient to pay the judgment
12 and the expenses of the litigation, no further relief seems to
13 have been thought necessary. The complaint was well
14 drawn and a cause of action presented by it has been clearly
15 stated, and there was consequently no ground for the motion
16 denied by the order from which the appeal has been taken.

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18 The order should be affirmed with \$10 costs besides the
19 disbursements.
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(JUDGMENT DISMISSING COMPLAINT)

The Judgment in a lawsuit is "the determination, decision, or sentence of a court, or of a judge." It is usually the final document in a suit.

SUPREME COURT OF THE CITY
OF NEW YORK.

PETER ROSE,

Plaintiff,

vs.

EMANUEL MARSHALL,

Defendant.

The issues in the above entitled action having been referred to Clifford Brown, Esq., to hear and determine the same, and his report having been filed on the 6th day of June, 1908, whereby he finds for the defendant with costs, and the costs and disbursements having been taxed by the Clerk of the Court at the sum of Two hundred and fifty and 78/100 Dollars (\$250.78).

NOW, on motion of Foster & Green, the attorneys for the defendant in this action, it is

ORDERED, ADJUDGED AND DECREED that the complaint in this action be dismissed on the merits, and that Edward Marschall, the defendant in this action, recover of Peter Rose, the plaintiff in this action, the sum of Two hundred and fifty and 78/100 Dollars (\$250.78), costs and disbursements taxed as aforesaid, and that the defendant have execution¹ against the plaintiff therefor.

Dated, New York, September 18th, 1908.

¹ The word "Execution" in a legal document in a civil action may mean either (1) "the carrying into effect the judgment given in a court of law; (2) a judicial writ by which an officer is empowered to carry a judgment into effect; (3) final process, or the act of signing, sealing, and delivering a legal document, or giving it the forms required to render it valid, as, the *execution* of a deed, or a will." In the judgment given above, the word *execution* has the second meaning.

31

(JUDGMENT FOR DEFENDANT UPON REPORT OF
REFEREE)

SUPREME COURT,
COUNTY AND STATE OF NEW YORK.

PERCY T. LANE,	} Plaintiff,
<i>against</i>	
ANDREW F. SHERMAN,	
	Defendant.

This action having been referred to Phineas W. Fuller, Esq., as sole Referee, to hear and determine the same, and his report having been filed, whereby he finds that the defendant is not indebted to the plaintiff, upon the promissory note set forth in the complaint on this action,

NOW, on Motion of Wallace Hayes, Esq., defendant's attorney, it is hereby

ADJUDGED by the Court that the defendant, Andrew F. Sherman, recover of the plaintiff, Percy T. Lane, the sum of three hundred and eighty-two and 29/100 Dollars (\$382.29) for his costs and disbursements in this action.

Clerk.

32

OTHER LEGAL DOCUMENTS

These comprise various kinds of Contracts, as well as Wills, Powers of Attorney, etc., etc.

They deal mainly with the transfer of property in some form or other.

Property may be transferred in three ways, viz. :

1. By sale.
2. By gift.
3. By bequest.

The document used to show the transfer of property by sale or gift is known as a Deed.

The document which transfers property by bequest is known as a Will.

Wills generally begin with an Invocation, such as " In the name of God, Amen," or with the words, " Know all men by these presents " ; sometimes merely with the name of the party making the will, who is variously referred to as the *deceased*, the *decedent*, the *testator*, etc.

Invocation {

(WILL)

IN THE NAME OF GOD, AMEN.

Declaration {

I, GEORGE HENRY JACKSON, of the City, County, and State of New York, Borough of Manhattan, being of sound and disposing mind and memory, and considering the uncertainty of this life, do make, publish, and declare, this to be my Last Will and Testament, as follows :

Bequests {

FIRST. After my lawful debts and funeral expenses are paid, I give to my executors, administrators and assigns, in trust, to be applied to the use and benefit of my beloved wife, Jane Jackson, all my real and personal estate of every kind whatsoever and wherever situated, as well as all my household furniture and personal effects of every kind thereunto belonging.

SECOND. I further give to my said wife of the remainder of my property so much thereof as she may wish to take.

THIRD. Should there be a balance of said property remaining at her death, it is my will that said balance be divided amongst my brothers and sister, and their heirs, as provided for by the laws of the State of New York.

FOURTH. I hereby appoint my son, Grover Jackson, to be the Executor of this, my last Will and Testament, hereby revoking all former Wills by me made, and it is my will that no bond shall be required of said Executor.

Witness
Clause

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal, the thirty-first day of December, in the year of our Lord, one thousand nine hundred and nine.

¹ WITNESSES :

Testamentary Clause

Signed, sealed, published and declared by George Henry Jackson, the Testator above named, as and for his last Will and Testament ; in our presence ; and we, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the day above mentioned.

Memorize

Endorse :

LAST WILL AND TESTAMENT

of

GEORGE HENRY JACKSON.

Dated :

¹ In New York State two witnesses are necessary ; in California and some other States, only one is required.

33

(CONVEYANCE BY DEED)

DEED WITH FULL COVENANTS.—SHORT FORM

Premises { THIS INDENTURE made the 22nd day of April, in the year Nineteen hundred and nine, between THOMAS DAY of the City, County and State of New York, banker, of the first part, and GEORGE KNIGHT of the same place, merchant, of the second part,

Consideration { WITNESSETH : That the said party of the first part, in consideration of Three thousand Dollars (\$3,000) lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever,

Description of Property { ALL that certain lot, piece or parcel of land, situate in the City of New York, and bounded and described as follows : Beginning at a point on the northerly line of Fifty-second Street, distant Three hundred and fifteen (315) feet westerly from the north-westerly corner of Fifty-second Street and Fifth Avenue, and part of the way through a party wall one hundred (100) feet, four (4) inches, to the center line of the block ; thence westwardly along said center line, and parallel with Fifty-second Street twenty (20) feet ; thence southwardly parallel with Fifth Avenue, and part of the way through a party wall, One hundred (100) feet, four (4) inches, to the northerly line of Fifty-second Street ; thence eastwardly twenty (20) feet to the point or place of beginning, being known by the street number of 25 West Fifty-second Street, subject to party wall agreements and covenants as to building, and against nuisances, as the same appears of record.

TOGETHER with the appurtenances and all the estate and rights of the first part, in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

AND the said party of the first part doth covenant with the party of the second part as follows :

Covenants

FIRST. That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same.

SECOND. That the party of the second part shall quietly enjoy the said premises.

THIRD. That the said premises are free from incumbrances.

FOURTH. That the party of the first part will procure any further necessary assurances of the title to said premises.

FIFTH. That the party of the first part will forever warrant the title to said premises.

Witness
Clause

IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

IN THE PRESENCE OF :

Acknowledgment

{ STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss. :

On this 23rd day of April, 1910, before me personally came Thomas Day, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein mentioned.¹

¹ Note the absence of a jurat in the acknowledgment.

34

(SEARCH)

A Search is an examination of records of transfers of property made for the purpose of verifying the correctness of a description of property and the soundness of the title thereto.

PREMISES : Fifteen lots as colored in above diagram.

REGISTER OF THE CITY AND COUNTY OF NEW YORK :

Please search for Conveyances, Mortgages and all other instruments of record in your office, of, upon, or affecting the above-described property, and made by William F. Bearns, from September 1, 1871, to date of search, Siegmund T. Meyer, from May 6th, 1871, to date of search.

For

Whitbeck & Wandell,
May 1909.

FRANCIS P. OSBORN, Assignee
of William F. Bearns,
to
JAMES H. COLEMAN.

Deed dated Oct. 27th,
1871.
Recorded Nov. 3rd, 1871.
Liber 1196 of Cons., page
212.

See Liber 1149 of Cons. 55, bankrupt proceeding.

SIEGMUND T. MEYER,
to
JAMES H. COLEMAN.

Mortgage dated May 8th,
1871.
Recorded May 8th, 1871.
Liber 1015 of Morts., p. 89.
\$13,000.

SAME
to
JOHN D. LEWIS.

Mortgage dated May 17th,
1871.
Recorded May 17th, 1871.
Liber 1017 of Morts., p. 206.
\$3,450

Nothing else found.

June 1, 1909, 9 A.M.
W. F. Gilley,
Dep. Reg.

35

(OLD FORM OF DEED)

The following exercise is useful not because this form of deed is likely to be dictated very often to a stenographer, but for the excellent practise it affords in peculiar terms and expressions likely to occur in other documents.

THIS INDENTURE¹ made the day of May, in the year one thousand eight hundred and eighty-eight, between LOUIS TAYLOR, of the City, County and State of New York, of the first part, and WALTER H. WISE, of the same place, of the second part.

WITNESSETH :

THAT the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the execution and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors and administrators being released and discharged from the same by these presents, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to his heirs and assigns forever,

ALL that certain lot, piece or parcel of land with the buildings thereon, bounded and described as follows : Beginning at a point three (3) feet east of a stone post at the line of Tim McCarthy's land, and running thence south-easterly fifty (50) feet to the boundary line of Westchester County; thence along said boundary line south-westerly seventy-nine (79) feet (6) inches ; thence north-westerly fifty (50) feet, and thence north-easterly seventy-nine (79) feet, six (6) inches to the point or place of beginning, be the said dimensions more or less ;¹ being the same premises designated on a certain map entitled "Surveyor's Map of Harlem " as lot No. 10, subject, however, to the dower right of the wife of the party of the first part ; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, liens,

¹ *Indenture*, "A mutual agreement in writing between two or more parties, whereof each party has usually a counterpart or duplicate. Indentures were originally duplicates, laid together and *indented* by a notched cut or line, or else written on the same piece of parchment and separated by a notched line so that the two papers or parchments corresponded to each other. But indenting has gradually become a mere form, and is often neglected, while the writings or counterparts retain the name of *indentures*."

issues and profits thereof, and also all the estate, right, title, interest, property, claims and demands whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above-mentioned and described premises unto the said party of the second part, his heirs and assigns, and to his own proper use, benefit and behoof forever.

AND the said Louis Taylor, for his heirs, executors and administrators, does hereby covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said Louis Taylor at the time of the sealing and delivery of these presents, was lawfully seized in his own right of a good, absolute and indefeasible estate of inheritance in fee simple, of and in, all and singular, the above granted, bargained and described premises with the appurtenances, and has good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

AND that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the party of the first part, his heirs or assigns, or of any other person or persons lawfully claiming or to claim the same.

AND that the same now are free, clear, discharged, and unencumbered of and from all further and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of any kind whatsoever, and also that the said party of the first part and his heirs and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in or to the hereinbefore granted premises by, from, under, or in trust for him or them, shall and will, at any time or place, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do and execute, or cause or proclaim to be made, done or executed all and every such further and other lawful and reasonable acts, conveyances and issues in the law for the more effectually possessing and confirming the premises hereby indicated to be granted in and to the said party of the second part, his heirs and assigns forever as by the said party of the first part, his heirs and assigns, or his counsel learned in the law, shall be reasonably disposed or required.

Commissioner for the State of New York.

36

(CONVEYANCE BY MORTGAGE)

A Mortgage is "a conveyance of property, upon condition, as security for the payment of a debt or the performance of a duty, and to become void upon payment or performance according to the stipulated terms." The written instrument by which the conveyance is made is also called a Mortgage. A right of redemption is "an inseparable incident of a mortgage until the mortgager is debarred by his own neglect, or by judicial decree."

(MORTGAGE)

THIS INDENTURE made the _____ day of _____, in the year nineteen hundred and ten, between GEORGE KNIGHT, of Westchester, New York, of the first part, and WILLIAM JONES, of Brooklyn, New York, of the second part.

WHEREAS: The said George Knight is justly indebted to the said party of the second part in the sum of two thousand dollars (\$2,000.) lawful money of the United States, secured to be paid by his certain bond or obligation bearing even date herewith, conditioned for the payment of the said sum of two thousand dollars (\$2,000.),

IT BEING EXPRESSLY AGREED that the whole of the said principal sum shall become due after default in the payment of interest as hereinafter provided,

NOW THIS INDENTURE WITNESSETH: That the said party of the first part for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon, and also for and in consideration of One Dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, does hereby grant and release unto the said party of the second part, and to his heirs and assigns forever,

ALL that certain lot of land situate in the City of New York, and bounded as follows:

Beginning at a point on the west side of the Southern Boulevard, about sixty-seven (67) feet, four (4) inches north of the north-west corner of the Southern Boulevard and One hundred and sixty-seventh Street; thence running west parallel with One hundred and sixty-seventh Street seventy-nine (79) feet, eleven (11) inches; thence north-west twenty-four (24) feet, three (3) inches, parallel with Simpson Street; thence east, parallel with One hundred and sixty-seventh Street, eighty-four (84) feet, nine (9) inches to the westerly side of the Southern

Boulevard ; and thence south, along the same, twenty-four (24) feet, three (3) inches, to the point of beginning, the same being known as No. 1864 Southern Boulevard.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part, in and to the said premises,

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

PROVIDED ALWAYS that if the said party of the first part, his heirs, executors, or administrators, shall pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted shall cease, determine and be void.

AND the said George Knight does covenant with the said party of the second part as follows :

FIRST. That the party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises herein described according to law.

SECOND. That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

THIRD. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in payment of interest for days.

IN WITNESS WHEREOF : The said party of the first part to these presents has hereunto set his hand and seal the day and year above written.

IN THE PRESENCE OF :

(STATE OF NEW YORK,)
COUNTY OF NEW YORK. } ss. :

Acknowledgment

On this day of in the year
Nineteen hundred and ten, before me personally came
George Knight, to me known and known to me to be the
individual described in and who executed the foregoing
instrument, and he thereupon duly acknowledged to me that
he executed the same.

37

(BOND)

A Bond is "an obligation in writing under seal, in which a person binds himself to pay another a certain sum of money at a specified time," usually with a condition added that "if the obligor does some particular act, the obligation shall be void, or else shall remain in full force."

A Bond usually accompanies a Mortgage.

KNOW ALL MEN BY THESE PRESENTS :

THAT I, GEORGE KNIGHT, of Westchester, New York, am held and firmly bound unto WILLIAM JONES, of Brooklyn, New York, in the sum of Four Thousand Dollars¹ (\$4,000.), lawful money of the United States, to be paid to said William Jones, his certain attorney, executors, administrators or assigns :

FOR WHICH PAYMENT, to be made, I do bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with my seal. Dated the day of
1909.

THE CONDITION of the above obligation is such, that if the above bounden George Knight, his heirs, executors or administrators, shall pay, or cause to be paid, unto the above named William Jones, his executors, administrators, or assigns, the sum of Two Thousand Dollars¹ (\$2,000.), then the above obligation to be void, otherwise to remain in full force and virtue.

SEALED AND DELIVERED }
IN THE PRESENCE OF : }

(Acknowledgment Clause)

¹ The amount of the bond is always twice the amount of the actual indebtedness.
In addition to the clauses contained in the above document, a Bond may contain certain other clauses, such as *Insurance, Insurance and Tax, Interest, Water Rates and Assessment*, etc.
A *Bottomry Bond* relates to the mortgage of a ship.

38

(BOND WITH INTEREST CLAUSE)

KNOW ALL MEN BY THESE PRESENTS :

THAT I, CHARLES WHEELER, of the City, County and State of New York, am held and firmly bound unto ALFRED TAYLOR, of the same place, in the penal sum of Twenty Thousand Dollars (\$20,000.), lawful money of the United States of America, to be paid to the said Alfred Taylor, his executors, administrators or assigns, for which payment well and truly made, I do hereby bind myself, my heirs, executors and administrators firmly by these presents. Sealed with my seal, dated the 26th day of June, One thousand, nine hundred and nine.

The condition of the above obligation is such, that if the above bounden Charles Wheeler, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid unto the above named Alfred Taylor, his executors, administrators or assigns, the just and full sum of Ten thousand Dollars (\$10,000.), with interest thereon, at the rate of six per cent. per annum, payable semi-annually, on the first days of April and October respectively, in each year, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED that should any default be made in the payment of the said interest, on any day whereon the same is made payable as above expressed, and should the same remain unpaid and in arrears for the space of six months, or should any tax or assessment to be hereafter imposed upon the premises described in the mortgage accompanying this bond become due or payable, and should the same remain unpaid and in arrears for the space of three months, then and from thenceforth, that is to say, after the lapse of said periods, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of said Alfred Taylor or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

SEALED AND DELIVERED }
IN THE PRESENCE OF : }

39

(BOND OF INDEMNITY)

KNOW ALL MEN BY THESE PRESENTS :

THAT, WHEREAS, JOHN T. LLOYD, late of the City of New York, died in said city on the 2nd day of December, 1907 ; and whereas Anna Lloyd, the widow of said decedent, is about to apply for Letters of Administration upon his estate, upon giving bond for the faithful performance of her duty in the discharge of her trust as such administratrix in the sum of Fifty Thousand Dollars ;

AND WHEREAS, BENJAMIN HOBSON, of the City of Brooklyn, County of Kings and State of New York, executed said bond of even date with this instrument,

NOW THEREFORE, We, the undersigned, the widow and all the heirs at law and next of kin of said John T. Lloyd, in consideration of the premises and the sum of One Dollar to each of us in hand paid, the receipt whereof is hereby acknowledged, do hereby jointly and severally, for ourselves and each of us, and for the heirs, executors and administrators of each of us, bind ourselves and covenant and agree to and with the said Benjamin Hobson, that we will indemnify him and save him harmless from any liability, claim, demand, or cause of action which may in any manner arise or accrue in favor of any person or persons from his becoming a surety upon said bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day of May, 1910.

IN THE PRESENCE OF :

40

(LEASE)

A Lease is "a demise or letting of lands, tenements, or hereditaments" (e.g., *any species of property that may be inherited*) "to another for life, for a term of years, or at will . . . usually for a specified rent or compensation"; also the contract for such letting.

THIS INDENTURE, made the 10th day of October, 1909, between HERRICK LOVELL, of the first part, and MEYER MOSES, of the second part,

WITNESSETH :

THAT the said party of the first part hath letten, and by these presents does grant, demise, and to farm let unto the said party of the second part, the house and lot situated on the north-west corner of One Hundred and Thirty-first Street and Lenox Avenue, with the appurtenances, for the term of three years, from the 15th day of October, 1909, at the yearly rent or sum of Twenty-five hundred Dollars (\$2500.), to be paid in equal monthly payments.

AND IT IS AGREED that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and to remove all persons therefrom.

AND the said party of the second part does covenant to pay to the said party of the first part the said yearly rent as herein specified, on the first day of each and every month, and that at the expiration of the said term, the said party of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

AND the said party of the first part does covenant that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

(Acknowledgment.)

41

SCHEDULE

SHOWING RECEIPTS AND EXPENSES

for the

SIX MONTHS ENDING MAY 31st, 1910, FOR REAL ESTATE

*Income from Real Estate belonging jointly to J. P. Bell Trust and
S. Finley Bell Trust Estates for six months ending May 31, 1910.*

Receipts.

240 Broadway :			
Store, 7 months to May 1st.	.	.	\$3,500.00
2d floor, 7 months to April 1st	.	.	1,458.31
3d and 4th floors, 6 months to May 1st			499.98
			<hr/>
			\$5,458.29
123 West 49th Street :			
Expenditures exceeded receipts.			None.
453 Second Avenue :			
6 months to June 1st	.	.	450.00
455 Third Avenue :			
6 months to June 1st	.	.	450.00
457 Madison Avenue :			
6 months to June 1st	.	.	500.00
459 First Avenue :			
6 months to June 1st	.	.	450.00
461 Lexington Avenue :			
6 months to June 1st	.	.	450.00
22 West 33rd Street :			
6 months to June 1st	.	.	450.00
10 West 3d Street :			
6 months to June 1st	.	.	450.00
			<hr/>
			3,200.00
Total receipts			<hr/>
			<u>\$8,658.29</u>

42

(ASSIGNMENT)

An Assignment is a "transfer of title or interest by writing." The document showing such transfer is also called an Assignment.

Assignments are frequently employed by bankrupts for the purpose of transferring their property to certain persons called *assignees* in whom it is vested for the benefit of creditors.

(GENERAL ASSIGNMENT)

KNOW ALL MEN BY THESE PRESENTS: ¹

THAT I, HENRY S. JOHNSON, of the City, County, and State of New York, for value received, have sold, and by these presents do grant, assign and convey unto PHILIP R. BATES of the same place, all the stock and fixtures now in my store located at 215 Broadway in the Borough of Manhattan, in said City of New York,

TO HAVE AND TO HOLD the same unto the said Philip R. Bates, his executors, administrators and assigns forever, to and for the use of said Philip R. Bates, hereby constituting and appointing said Bates my true and lawful attorney irrevocable in my name, place and stead, for the purposes aforesaid, to ask, demand, sue for, attach, levy, recover and receive all such sum or sums of money which now are, or may hereafter become due, owing and payable for, or on account of, all or any of the accounts, dues, debts and demands above assigned.

GIVING AND GRANTING unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary, as fully, to all intents and purposes, as I might or could do, if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 20th day of December, one thousand nine hundred and nine.

SEALED AND DELIVERED
IN THE PRESENCE OF :

¹ *Presents*, "Present letters or instrument." "Know all men by these presents," that is, by the writing itself.

43

(ASSIGNMENT OF CLAIM)

KNOW ALL MEN BY THESE PRESENTS :

THAT I, WILLIAM BROWN, of Berlin, Germany, for and in consideration of the sum of one dollar to me in hand paid by FREDERICK H. JONES, and of other valuable considerations unto me from him moving, have assigned, sold and transferred, and by these presents do sell, assign, transfer and set over unto the said Frederick H. Jones, of the City of New York, all claims and demands of whatsoever kind or description whether in law or in equity, which I had against Henry Jones, now deceased, at the time of his death, and which I now have against his Administratrix, and especially a certain claim or demand existing in my favor against the said Henry Jones, deceased, arising out of an agreement dated the 15th day of September, 1907, and made and entered into between William Brown and George Field of the one part, and the said Henry Jones of the other part.

TO HAVE AND TO HOLD the said claims and demands unto the said Frederick H. Jones, his executors, administrators and assigns, forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this day of July, 1909.

UNITED STATES CONSULATE, }
BERLIN, GERMANY. }

On this day of July, 1909, before me personally came William Brown, to me known and known to me to be the same person mentioned and described in, and who executed the foregoing instrument, and who to me acknowledged that he executed the same for the purposes therein mentioned.

44

(AGREEMENT)

An Agreement is a Contract or engagement that something shall be done or omitted. It is also "an exchange of promises, mutual understanding, arrangement, or stipulation." The document embodying such reciprocal promises is also called an Agreement.

AGREEMENT made this 23rd day of May, One thousand nine hundred and ten, between F. C. DEAN, party of the first part, and CHARLES T. WILSON, party of the second part.

WHEREAS, there have been deposited with THOMAS W. AMES, Esq., Two hundred and eighty-seven thousand eight hundred and fifty-five shares of the capital stock of the Atlas Machine Company of New York, One hundred thousand shares of which are the property of said Charles T. Wilson, and One hundred and eighty-seven thousand, eight hundred and fifty-five shares are the property of said F. C. Dean,

NOW THEREFORE, in consideration of the premises and the sum of One Dollar, by each to the other paid, the receipt whereof is hereby acknowledged, it is agreed, by and between the parties to these presents, the said Thomas W. Ames also assenting thereto,

FIRST. That the said Two hundred and eighty-seven thousand, eight hundred and fifty-five shares of the Atlas Machine Company of New York shall remain in the custody and keeping of said Thomas W. Ames for the term of one year from the date hereof.

SECOND. It is further agreed that said stock shall not be delivered to any person or persons by said Thomas W. Ames during said term, except upon the written order of said F. C. Dean, and that at the expiration of said term Thomas W. Ames shall deliver said shares to said party of the first part.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF :

46

(POWER OF ATTORNEY)

A Power, letter, or warrant, of attorney is a "written authority from one person empowering another to transact business for him."

An Attorney is "one who is legally appointed by another to transact any business for him." Such an one is called an *attorney in fact*. "A legal agent qualified to act for suitors and defendants in legal proceedings is called an *attorney in law*."

KNOW ALL MEN BY THESE PRESENTS :

THAT I, ARTHUR T. SPRAGUE, have made, constituted and appointed, and by these presents do make, constitute and appoint, HERMAN McINTIRE my true and lawful attorney, for me and in my name, place and stead.

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 10th day of January, 1910.

SEALED AND DELIVERED
IN THE PRESENCE OF :

(Usual Acknowledgment.)

47

(ANOTHER FORM OF POWER OF ATTORNEY)

KNOW ALL MEN BY THESE PRESENTS :

THAT I, ALFRED TAYLOR, of the City, County and State of New York, have made, constituted, and appointed, and by these presents do make, constitute, and appoint CHARLES WHEELER, of the same place, my true and lawful attorney for me and in my name, place and stead, to buy and sell all goods, wares and merchandise, and to pay for the same either in cash or in credit, to collect all debts and claims due and payable to me, and to compromise any or all such claims and demands, and to deposit money in, and to draw and endorse any and all checks and drafts for any sum or sums of money on any and all bank and banks, and to collect the amounts thereof, and to make, sign and endorse any and all promissory note or notes, and offer the same for discount, GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act or thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of , one thousand, nine hundred and ten.

SEALED AND DELIVERED

IN THE PRESENCE OF :

(Usual Acknowledgment.)

48

(RELEASE FROM COPARTNERSHIP LIABILITY)

KNOW ALL MEN BY THESE PRESENTS :

WHEREAS, the late copartnership firm of E. J. Stern & Son, of the City of New York, are indebted to me, the undersigned Charles Lewin, of the City of New York, in the sum of Five thousand dollars, by virtue of a judgment made and entered in the City Court of the State of New York, on the 7th day of October, 1908, in an action wherein said Charles Lewin was the plaintiff and the late firm were defendants; and

WHEREAS, the said copartnership has been dissolved; and

WHEREAS, I have agreed with Edward A. Stern, a member of the said firm, to compound or compromise my claim on him individually in respect of the said indebtedness to me of the said firm for the sum of six hundred and fifty dollars,

NOW, THEN, in consideration of the sum of Six hundred and fifty dollars (\$650.) to me, the said Charles Lewin, paid by the said Edward A. Stern, at or before the time of subscribing this release, I, the said Charles Lewin, do hereby, according to the statute in such case made, release and exonerate the said Edward A. Stern of and from all liability incurred by him by reason of his connection with said copartnership. Provided, however, that this present release is made pursuant to Section 1942 of the Code of Civil Procedure, and shall have no greater or other effect than as by the said Act and by this release is provided.

WITNESS my hand, this

day of June, 1909.

49

(RELEASE)

KNOW ALL MEN BY THESE PRESENTS :

THAT I, _____, for and in consideration of the sum of _____ dollars, lawful money of the United States of America, to me in hand paid by the receipt whereof is hereby acknowledged, have remised, released and forever discharged, and by these presents do for myself, my heirs, executors and administrators remise, release and forever discharge the Union Square Company of New York, its successors or assigns, of and from all and all manner of action and actions, cause and causes, of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against the Union Square Company I have ever had, now have, or which my heirs, executors or administrators hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of these presents, and including especially and particularly any and all claim which I may have, by reason of an accident which occurred to me, while in the employ of and upon the premises of the said Union Square Company, and whereby and as a result whereof I have been deprived by amputation of one of my limbs.

IN WITNESS WHEREOF I have hereunto set my hand
and seal this _____ day of _____, 1909.

SOME WESTERN LEGAL FORMS

(COURT DOCUMENTS)

(NOTE.—In California Court documents are not folioed unless so directed by the court in which the case is being tried ; on the other hand it is customary in that State to write legal documents on long paper with numbered lines, usually 34 lines to a page. This is done in New York State only for cases on appeal. The square paper, $8\frac{1}{2} \times 10\frac{1}{2}$, is coming more and more into use all over the country.)

50

(A CALIFORNIA COMPLAINT)

Instead of calling the heading the "Caption," it is called in California "Title of the Court and Cause."

Observe the absence of a top line to the "box."

Notice the names of John Doe, etc., in the title. These are fictitious names always used in court documents when the real names of parties are not known.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF KERN

FRESNO MIDWAY OIL AND LAND COMPANY
(a Corporation),

Plaintiff,

vs.

W. P. CUNNINGHAM, H. A. KING, JOHN DOE,
RICHARD ROE, CHARLES DOE, FRED ROE,
HARRY BLACK and DICK BLUE,
Defendants.

Plaintiff complaining alleges :

I

That at all the times herein mentioned, it was and is now a corporation, organized and existing under the laws of the State of California.

II

That on the 15th day of June, 1908, plaintiff was, and for a long time prior thereto, had been in the open, notorious, peaceable, actual, and exclusive possession of all that certain piece or parcel of land described as follows, to wit : The south-east quarter of section 14, Township 32 South, Range 23 East, Mount Diablo, Base and Meridian, Kern County, California, and of the dwelling houses, structures and improvements thereon.

III

That on said 15th day of June, 1908, and while the plaintiff was so in the actual and peaceable possession of said land and premises, the defendants with violence and by force entered thereon and in a forcible manner ousted said plaintiff from said land and premises.

IV

That the said defendants unlawfully withhold and keed possession of said land and premises, and have so held and kept possession of the same at all times since the said 15th day of June, 1908.

And for a further and separate cause of action against defendants, plaintiff alleges :

I

That at all the times herein mentioned it was and is now a corporation, organized and existing under the laws of the State of California.

II

That on the 15th day of June, 1908, plaintiff was entitled to the possession of the following described land and premises, to wit : The south-east quarter of Section 14, Township 32 South, Range 23 East, Mount Diablo, Base and Meridian, Kern County, California, and of the dwelling houses, structures and improvements thereon.

III

That on the said 15th day of June, 1908, the defendants by force and violence, and without the right so to do, entered and took possession of the same, and from that day hitherto have kept and still hold and keep possession of the same unlawfully and by force, contrary to the Statute in such case made and provided.

And for a further, separate and distinct cause of action against defendants, plaintiff alleges :

I

That at all the times herein mentioned, it was and is now a corporation, organized and existing under the laws of the State of California.

II

That on the 15th day of June, 1908, plaintiff was and for a long time prior thereto had been in the open, notorious,

1 peaceable, actual and exclusive possession of all that certain
2 piece, or parcel of land, described as follows, to wit : the
3 north-east quarter of Section 14, Township 32 South, Range
4 23 East, Mount Diablo, Base and Meridian, Kern County,
5 California, and of the dwelling houses, structures, and
6 improvements thereon.

7 III

8 That on said 15th day of June, 1908, and while the
9 plaintiff was so in the actual and peaceable possession of said
10 land and premises, the defendants with violence and by force
11 entered thereon, and in a forcible manner ousted said
12 plaintiff from said land and premises.

13 IV

14 That the said defendants unlawfully withhold and keep
15 possession of said land and premises, and have so held and
16 kept possession of the same at all times since the said 15th
17 day of June, 1908.

18 And for a further and separate cause of action against
19 defendant, plaintiff alleges :

20 I

21 That at all the times herein mentioned, it was and is now
22 a corporation, organized and existing under the laws of the
23 State of California.

24 II

25 That on the 15th day of June, 1908, plaintiff was entitled
26 to the possession of the following described land and premises,
27 to wit : the north-east quarter of Section 14, Township 32
28 South, Range 23 East, Mount Diablo, Base and Meridian,
29 Kern County, California, and of the dwelling houses,
30 structures, and improvements thereon.

31 III

32 That on said 15th day of June, 1908, the defendants by
33 force and violence, and without the right so to do, entered
34 and took possession of the same and from that day hitherto
35 have kept and still hold and keep possession of the same
36 unlawfully, and by force, contrary to the form of this
37 Statute in such case made and provided.

38 WHEREFORE, plaintiff prays judgment against defend-
39 ants for the recovery and restitution of possession of said
40 lands and premises and its cost of suit.

41 Geo. L. Whitaker,

42 Attorney for Plaintiff.

1 STATE OF CALIFORNIA, }
2 COUNTY OF KERN. } ss.
3

4 E. J. BOUST, being first duly sworn, deposes and says :
5 That he is an officer of the plaintiff herein, to wit : a Director
6 thereof, and is also the agent and attorney in fact of said
7 plaintiff, and as such makes this affidavit on behalf of said
8 plaintiff ; that he has read the foregoing Complaint and
9 knows the contents thereof ; and that the same is true of
10 his own knowledge except as to those matters therein stated
11 on information and belief, and as to those matters he verily
12 believes it to be true.
13

14 Subscribed and sworn to before } E. J. Boust.
15 me this 29th day of June, 1908. }
16

17 I. L. Miller,
18 County Clerk in and for the County of Kern,
19 State of California.
20

21 (SEAL) By Bedell Smith,
22 Deputy Clerk.
23

24 No. 5813.

25 Complaint filed June 29, 1908.
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(DEMURRER)

A Demurrer is "a stop or pause by a party to an action, for the judgment of the court on the question, whether, assuming the truth of the matter alleged by the opposite party, it is sufficient in law to sustain the action or defense, and hence whether the party resting is bound to answer or proceed further."

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF KERN

CHARLES YOUNG,

Plaintiff,

vs.

THE PENNSYLVANIA FIRE INSURANCE
COMPANY (a Corporation).

and

THE NORTH-WESTERN NATIONAL INSURANCE
COMPANY (a Corporation),

Defendants.

No. 5690.

Now comes the Pennsylvania Fire Insurance Company, one of the defendants in the above entitled action, and demurs to plaintiff's Complaint on file herein, and for grounds of demurrer specifies :

I

That said Complaint does not state facts sufficient to constitute a cause of action.

II

(a) That said Complaint is uncertain in this, that it cannot be ascertained therefrom what are the facts upon which the allegation in Paragraph VI of said Complaint, that the policy of insurance therein referred to "remained in full force," is based.

(b) That it cannot be ascertained therefrom what are the facts upon which the allegation in Paragraph VII of said Complaint that the said policy "was in full force" is based.

1 (c) That it cannot be ascertained therefrom what are the
2 facts upon which the allegation in Paragraph XII of said
3 complaint, "that said plaintiff was deceived and led to
4 believe," etc., is based.

5
6 (d) That it cannot be ascertained therefrom what are the
7 acts which led the plaintiff to believe that the said policy
8 was valid as alleged in Paragraph XIX of said Complaint.

9
10 WHEREFORE said defendant prays to be hence dismissed
11 with its costs.

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13 -----
14 Attorneys for said Defendant.
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1 IN THE SUPERIOR COURT OF THE COUNTY OF
2 KERN, STATE OF CALIFORNIA

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4
5 C. F. BENNETT,

6 Plaintiff,

7 *vs.*

8 ZENDA MINING AND MILLING COMPANY
9 (a Corporation),

10 Defendant.

11
12
13 } AMENDED
14 COMPLAINT

15 By leave of Court first had, plaintiff files this his Amended
16 Complaint against defendant herein, and for cause of action
17 alleges :

18
19 I

20 That defendant is, and at all the times herein mentioned
21 was, a corporation, duly incorporated, organized and
22 existing under the laws of the State of California.

23
24 II

25 That defendant is indebted to plaintiff in the sum of One
26 hundred and eighty-seven and 96/100 (\$187.96) Dollars, for
27 balance of an account for cash advanced and paid out by
28 plaintiff for defendant, and for hauling freight by plaintiff
29 for defendant, all at defendant's special instance and
30 request, within the two years last past, and at and in said
31 County of Kern, State of California.

32
33 III

34 That no part of said balance of account has ever been paid.
35 WHEREFORE, plaintiff prays judgment against defend-
36 ant for the sum of One hundred and eighty-seven and 96/100
37 (\$187.96) Dollars, and costs of action.
38
39

40 -----
41 Attorneys for Plaintiff.
42

1 STATE OF CALIFORNIA, } ss. :
2 COUNTY OF KERN. }

3

4 C. F. Bennett, being by me first duly sworn, deposes and
5 says : that he is the plaintiff in the within entitled action ;
6 that he has read the foregoing Amended Complaint, and
7 knows the contents thereof, and that the same is true of his
8 own knowledge except as to such matters as are therein
9 stated upon information and belief, and as to those matters
10 he believes it to be true.

11

12 Subscribed and sworn to before me, }
13 this day of 1909. }

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(ORDER PERMITTING AMENDED COMPLAINT
TO BE FILED)

IN THE SUPERIOR COURT OF THE COUNTY OF
KERN, STATE OF CALIFORNIA

C. F. BENNETT,

Plaintiff,

vs.

ZENDA MINING AND MILLING COMPANY
(a Corporation),

Defendant.

ORDER
PERMITTING
AMENDED
COMPLAINT
TO BE FILED

Upon application of plaintiff's attorneys, and good cause appearing therefor, it is ordered that plaintiff be and hereby is allowed to file an Amended Complaint in the above entitled action.

Judge of the Superior Court.

Dated, March , 1909.

54

1 (CALIFORNIA AFFIDAVIT OF SERVICE BY MAIL)
 2
 3 IN THE SUPERIOR COURT OF THE COUNTY OF
 4 KERN, STATE OF CALIFORNIA
 5

6
 7 C. F. BENNETT,

Plaintiff,

8
 9 *vs.*

10 ZENDA MINING AND MILLING COMPANY
 11 (a Corporation),

Defendant.
 12
 13

AFFIDAVIT
 OF SERVICE
 BY MAIL

14 STATE OF CALIFORNIA, }
 15 COUNTY OF KERN. } ss. :
 16

17 VIERA COLE, being first duly sworn, says :

18 That she is over the age of eighteen years and resides
 19 at Bakersfield, California ; that C. L. Claflin, and W. B.
 20 Beazley, are the attorneys of record for the plaintiff in the
 21 above entitled action, and have their office at Bakersfield,
 22 California, and that affiant is the clerk of said attorneys ;
 23 that Messrs. Waterman and Wood and L. P. Green, are the
 24 attorneys for the defendant in said action, and have their
 25 office at 420 to 424 Wilcox Building, No. 206 South Spring
 26 Street, Los Angeles, California ; that in each of said two
 27 places, to wit : Bakersfield, and Los Angeles, California,
 28 there is a United States post-office, and that between each
 29 of said two places there is a regular daily communication by
 30 mail ; that on the 15th day of September, 1908, affiant
 31 served the annexed notice of decision and entry of judgment
 32 upon the said Messrs. Waterman & Wood and L. P. Green,
 33 said attorneys for defendants, by then depositing in the
 34 United States post-office at said Bakersfield, a full, true and
 35 correct copy of said notice enclosed in a sealed envelope
 36 addressed to the said Messrs. Waterman & Wood, and
 37 L. P. Green, at 420 to 424 Wilcox Building, No. 206 South
 38 Spring St., and prepaying the postage thereon.

39 Subscribed and sworn to before me, }
 40 this 15th day of September, 1909. }
 41
 42

55

(CALIFORNIA ANSWER)

IN THE JUSTICE'S COURT OF THE THIRD
TOWNSHIP, KERN COUNTY, CALIFORNIA

J. F. BLALOCK,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY (a Corporation),
SOUTHERN PACIFIC RAILROAD COMPANY (a
Corporation), and ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY (a Corporation),
Defendants.

Come now the defendants, Southern Pacific Company and Southern Pacific Railroad Company, and for their answer to the complaint of plaintiff on file in the above entitled action, deny and allege as follows :

Deny that on or about the 12th day of November, 1908, or at any other time, the plaintiff was the owner or possessed of the cow described in his complaint, and deny that the said cow was worth sixty-five dollars, or any other sum of money.

Deny that on or about the 12th day of November, 1908, the plaintiff was the occupant or licensee, or otherwise entitled to the possession, of a certain tract of land in the Third Township, County and State aforesaid, situated next to the right of way of these defendants or either of them, or to the land of these defendants or either of them upon which they or either of them maintained a railroad track, as alleged in the complaint, or otherwise.

Deny that the cow mentioned in the said complaint casually, or without the fault of the said plaintiff, strayed in or upon the track or ground occupied by these defendants or either of them, from the land occupied by the said plaintiff, or upon which the plaintiff had any right to keep said cow.

For a further and separate defense to the said cause of action stated in plaintiff's complaint, these defendants

1 allege that the cow mentioned in the said complaint was
2 killed within the limits of the station grounds of the station
3 of Kern at a point on the said track where neither of these
4 defendants was obligated by law or otherwise to maintain
5 said fence, or any fence.

6
7 For a further and separate defense to the cause of action
8 stated in plaintiff's complaint, these defendants allege that
9 the above entitled Court has no jurisdiction of the said cause
10 of action, and no right to try the issues between the plaintiff
11 and these defendants, for the reason that the right of
12 possession of land is necessarily involved.

13
14 WHEREFORE, these defendants pray that the plaintiff
15 take nothing by this action, but that these defendants have
16 judgment for their costs, and for such other or further relief
17 as may be proper in the premises.

18
19 FRED E. BORTON,
20 Attorney for Defendants above named.

21
22 STATE OF CALIFORNIA, }
23 COUNTY OF KERN. }

24
25 Fred E. Borton, being first duly sworn, says : that the
26 above named defendants are corporations, and have no
27 officer or agent within this county qualified to make this
28 affidavit ; that affiant is attorney for said defendants in this
29 action, and makes this affidavit in their behalf by reason
30 of the above facts. That affiant has read the portion of the
31 said answer denominated "A Further and Separate
32 Defense," commencing on line 14 of page 2 of the said
33 answer, and ending with the word "involved" on line 21
34 of the said page 2, and knows the contents thereof, and that
35 the said is true of his own knowledge.

36
37 FRED E. BORTON.

38
39 Subscribed and sworn to before me, }
40 this 16th day of October, 1908. }

41 A. F. LIGHTNER,
42 N. P., etc.

56

(NOTICE OF TRIAL)

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF
LOS ANGELES

MATTIE S. FARNUM,

Plaintiff,

vs.

KERN VALLEY BANK (a Corporation), and
RONALD McDONALD,

Defendants.

To the above named defendants and to Matthew S. Platz,
their attorney: You and each of you will please take notice
that the above entitled cause has been set for trial before
the above entitled Court in the Court Room of Department 2
thereof, for Friday, the first day of November, 1908, at the
hour of 10 A.M.

Attorneys for Plaintiff above named.

¹ RECEIVED a copy of the foregoing Notice this 30th
day of October, 1908.

Attorney for Defendants.

¹ The following various forms of Admission of Service are employed in California:

"Received copy of the within this day of , 190 ."

"Due service of the within admitted this day of 1908."

"Received _____"

Admissions of Service, as well as Verifications, are frequently printed on the inside of the
"back."

57

(CALIFORNIA BRIEF)

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF
LOS ANGELES

C. F. BENNETT,

Plaintiff,

vs.

ZENDA MINING AND MILLING COMPANY
(a Corporation),

Defendant.

DEFENDANT'S
POINTS AND
AUTHORITIES

Plaintiff's books show and plaintiff testified that prior to February 23rd, 1907, he had various transactions with the defendant, all of which had been settled; that on that date all previous accounts had been closed, except that one item of \$2.00, for hauling a dog from defendant's mine to Caliente, had never been adjusted. The transactions involved in this action commenced on February 16th and continued to March 7th, 1908, the date on which Van Waggonen abandoned his lease and left the country. The question at issue is purely one of law, and having asserted that Van Waggonen was the ostensible agent of the defendant, it is incumbent upon the plaintiff to meet all the requirements of the law to show that relation. . . . Plaintiff has long since ceased business relations with defendant, and had no authority to act for it further. If he elected to rely and act upon the assumed authority of Van Waggonen, a total stranger, without ascertaining Van Waggonen's true relation toward defendant, and the extent and nature of his authority, as he was legally bound to do, he acted solely at his own risk.

OSTENSIBLE AGENCY

An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

To obtain judgment against defendant it was necessary for plaintiff to show the existence of a contract and promise, either expressed or implied, made in person or through an agent on the part of the defendant to pay for the goods.

Gosliner and Granger, Bank of
Cal., 124 Cal. 225-8.

Where one without authority assumes to act as agent, he makes himself liable as principal.

Terwilliger *vs.* Murphy, 3 N.E. 404.
Pratt *vs.* Beaupre, 10 Minn. 187.

The burden of showing the existence of an agency is upon the party who alleges it.

John *vs.* Kelley, 50 Ill. App. 570.

That receipts were signed by one as agent does not prove that he is an agent

Donan *vs.* Mitchell, 26 Ga. 472.

Whoever deals with an agent is put on his guard by that very fact, and does so at his risk. It is his right and duty to inquire into and ascertain the nature and extent of the powers of the agent, and to determine whether the act or contract about to be consummated comes within the province of the agency, and will or will not bind the principal.

Chaffee *vs.* Stubbs, 37 La. Ann. 656.

Plaintiff has shown no law or authority on which to base a recovery, and defendant, under the principles established by the foregoing authorities, conclusively shows to this Court that defendant is entitled to judgment for its costs herein expended.

Respectfully submitted,

Attorneys for Defendant.

58

1 (FINDINGS)

2 The result of a judicial examination or inquiry, especially into
3 some matter of fact.

4 IN THE SUPERIOR COURT IN AND FOR THE
5 COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

6
7 MATTIE S. FARNUM,
8
9 Plaintiff,

10 *vs.*

11 KERN VALLEY BANK (a Corporation), } FINDINGS
12 R. McDONALD, JOHN DOE, RICHARD ROE,
13 HENRY BLACK AND ANNA BLACK,
14 Defendants.

15 The above entitled action came on duly and regularly for
16 trial before the Court, sitting without a jury on the third
17 day of March, 1908, on the issues raised by the complaint
18 filed by the plaintiff, and the separate amended answer and
19 amended cross-complaint, filed by the defendant, Kern
20 Valley Bank, a corporation, and the answer to the amended
21 cross-complaint filed by the plaintiff in said action. A trial
22 by jury having been waived by both parties, F. D. McClure,
23 Esq., and F. E. Borton, Esq., appearing as Counsel for
24 Plaintiff, and Matthew S. Platts, Esq., appearing as Counsel
25 for the Defendant, Kern Valley Bank, a corporation.
26 Whereupon witnesses were duly sworn and examined and
27 documentary evidence introduced on behalf of the plaintiff,
28 and evidence having been introduced by the defendant,
29 Kern Valley Bank, a corporation, both of said last named
30 parties having introduced their evidence, the said cause was
31 argued; thereupon the plaintiff made a motion for judgment
32 as prayed for in plaintiff's complaint, and a motion for a
33 non-suit upon defendant's cross-complaint, at which time
34 it was submitted to the Court for decision, and after due
35 deliberation, the Court granted plaintiff's motions and finds
36 the following facts as the facts in the case:

37 I

38 That on the first day of September, 1907, and for a long
39 time prior thereto, and ever since said date, the said plaintiff
40 has been, and she now is the owner and in possession of those
41 certain lots, pieces or parcels of land situate, lying, and being
42 in the City of Bakersfield, County of Kern, State of California.

II

That the plaintiff holds the fee title to the said premises and the appurtenances thereunto belonging, and that said property is a homestead of the said plaintiff.

III

That the defendant, the Kern Valley Bank, a corporation, also claims an interest or lien upon said property by virtue of attachments, executions, deficiency judgments, or other liens in the cases entitled "Kern Valley Bank, a corporation, Plaintiff, vs. N. G. Farnum, Defendant" filed in the Superior Court of the County of Kern, State of California.

IV

The Court finds that the defendant, Kern Valley Bank, a corporation, did maliciously attempt to cloud the title of said plaintiff to said premises, and to annoy the said plaintiff, and did threaten to forcibly and maliciously and unlawfully enter into the possession of said premises.

V

The Court finds that it is untrue that the said premises are not now, nor have they ever been, the separate property of plaintiff; that it is untrue that said lots were not paid for, and said building or house erected with the separate money of the plaintiff.

AS CONCLUSIONS OF LAW from the foregoing facts, the said Court finds:

(1) That for all the times mentioned in plaintiff's complaint, the said plaintiff, Mattie S. Farnum, is and was the owner in fee of the property described in the complaint.

(2) That the said defendant, Kern Valley Bank, a corporation, does not hold, and it has not any estate, right, title, interest or lien, in, to or against said property, or any parcel or part thereof.

(4) That the plaintiff, Mattie S. Farnum, should recover from defendant, Kern Valley Bank, a corporation, her costs herein taxed, at the sum of Dollars (\$).

Let judgment be entered accordingly.

Dated this day of March, 1908.

Judge of the Superior Court of
County of Los Angeles,
State of California.

59

(DISMISSAL)

IN THE SUPERIOR COURT OF THE COUNTY OF
SAN FRANCISCO, STATE OF CALIFORNIA

MARVIN DAVIS,

Plaintiff,

vs.

PENNSYLVANIA FIRE INSURANCE
COMPANY (a Corporation, *et al.*),
Defendants.

No. 5690.
DEPARTMENT
No. 2

DISMISSAL

All matters in dispute between the respective parties to the above entitled action having been fully adjusted and settled, said action is hereby dismissed, and the Clerk of the above Court is hereby authorized to enter such dismissal of record.

THOS. SCOTT,

Attorney for Plaintiff.

Dated, San Francisco, Calif.,

September 22nd, 1909.

60

(CALIFORNIA COST BILL)

IN THE SUPERIOR COURT OF THE COUNTY OF
KERN, STATE OF CALIFORNIA

C. F. BENNETT,

Plaintiff,

vs.

ZENDA MINING AND MILLING COMPANY
(a Corporation),

Defendant.

MEMORANDUM
OF COSTS AND
DISBURSE-
MENTS

1907.

Mch. 29.	Justice's fees filing Complaint and issuing summons	\$2.00
„ „	Notary's fees, 3 affidavits; one for attachment on undertaking	1.50
Apr. 1.	Sheriff's fees, Los Angeles, service summons and mileage	1.50
„ 6.	Constable fees, Caliente, service attachment, \$1.00, return \$.50, mileage \$.25	1.75
May 14.	Recorder's fees, Kern County, recording attachments	1.10
„ „	Clerk's certificate to signature of Justice of Peace to attachment . . . . .	.25
„ 22.	Sheriff's fees San Louis Obispo County, service of attachment and mileage (attachment of property of defendant made in San Louis Obispo County)	1.25

1908.

Jan. 17.	Certified copy Articles of Incorporation of Zenda Mining & Milling Company introduced in evidence50
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1	1908.		
2	Feb. 7.	Justice's fees, trial fees	\$3.00
3	" "	One-half expense of attendance of	
4		Justice at Caliente (stipulation of	
5		parties)	2.50
6	" 11.	Notary's fees affidavit to cost bill in	
7		Justice's Court . . . . .	.50
8	" "	Notary's fees affidavit of service of cost	
9		bill, Justice's court . . . . .	.50
10			
11		Total taxed in Justice's Court	16.33
12	Sept. 5.	Notary's fees, affidavit to this cost bill50
13	" "	" " " " of serving cost	
14		bill and notice decision60
15			
16			<u>\$17.85</u>
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61

(BILL OF EXCEPTIONS)

(Title Page)

IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA

MATTIE S. FARNUM,	}
Plaintiff and Respondent,	
<i>vs.</i>	
KERN VALLEY BANK (a Corporation, <i>et al.</i>),	
Defendant and Appellant.	}

PROPOSED BILL OF EXCEPTIONS
OF THE
KERN VALLEY BANK, A CORPORATION.

MATTHEW S. PLATZ,
Attorney for Appellant.

1 Charles A. Lee

2 Called as a witness in behalf of the plaintiff, and being first
3 duly sworn, testified upon direct examination as follows :

4 My name is Charles A. Lee. I reside in Kern County. I am
5 the County Recorder of Kern County. I find on pages 434 and
6 435 of Book 127 deeds Kern County Records a deed executed
7 by the Kern County Land Company to Mattie S. Farnum.

8 Here the said record was by the plaintiff offered in evidence.

9 Mr. Platz : If the Court please, I object to that going into
10 evidence upon the ground that it is irrelevant, immaterial,
11 and incompetent, and it is not within the pleadings in the
12 case and does not tend to prove any of the issues before this
13 Court in this case.

14 The Court : The objection is overruled.

15 Mr. Platz : We note an exception.

16 (Appellant's exception number 1.)

17 (Here the records above referred to were introduced in
18 evidence and are in the words and figures following.)

19 I find on page 471 Volume 2 of Homesteads, a declaration
20 of homestead, filed by Mattie S. Farnum.

21 Mr. McClure : If the Court please, we ask to introduce
22 the record in evidence.

23 Mr. Platz : That is objected to, your Honor, as irrelevant,
24 immaterial, and incompetent, and not within the issues
25 framed by the pleadings in this case.

26 The Court : Objection overruled.

27 Mr. Platz : Exception.

28 (Appellant's exception number 2.)

29 Mr. Platz : Now then, if the Court please, I move now
30 that the Court proceed to determine and pass upon these
31 questions of fact involved in this plea of abatement.

32 The Court : The motion is denied. Proceed with this
33 case in the ordinary way to try your case.

34 Mr. Platz : Note an exception.

35 (Appellant's exception number 3.)

36 Charles A. Lee

37 Recalled as a witness and testified as follows, on the part
38 of the defendant :

39 I find in book 187 of deeds, page 80, a deed from J. W.
40 Kelley, Sheriff of the County of Kern, to the Kern Valley Bank.

41 Mr. Platz : Now, I offer the deed in evidence.

42 Mr. McClure : If the Court please, we object to any deed

1 being offered in evidence from J. W. Kelley to the Kern
2 Valley Bank.

3 The Court : The objection is sustained.

4 Mr. Platz ; Note an exception.

5 (Appellant's exception number 4.)
6

7 SPECIFICATION OF ERRORS

8 1. The Court erred in overruling defendant's objection to the
9 Court proceeding to try the issues of fact in the case without
10 first disposing of the plea in abatement, exception No. 3.

11 2. The Court erred in admitting the deed in evidence, pur-
12 porting to convey the property in question to the plaintiff, the
13 deed not being referred to in the complaint, exception No. 1.

14 3. The Court erred in refusing the defendant to introduce
15 in evidence the sheriff's deed, exception No. 4.

16 4. The Court erred in admitting the declaration of home-
17 stead in evidence, the plaintiff being a married woman and
18 the declaration of homestead not being set out in the
19 complaint, exception No. 2.

20 The foregoing constitutes defendant's proposed Bill of
21 Exceptions on motion for a new trial herein, which defendant
22 serves upon the plaintiff, in accordance with defendant's
23 notice of intention to move for a new trial herein, heretofore
24 served and filed, and ask that the said statement on motion
25 for a new trial and Bill of Exceptions be authenticated and
26 settled as correct.

27 Dated, April 18th, 1908.
28

29 -----
Attorney for defendant.

30 The foregoing Bill of Exceptions and statement on motion
31 for a new trial in the foregoing action was on the _____ day
32 of April, 1908, duly served within the time required by law.
33

34 -----
Attorney for plaintiff.

35 We hereby certify and stipulate that the foregoing Bill of
36 Exceptions and statement on motion for a new trial is
37 correct and the same may be allowed and settled.

38 Dated, _____ day of _____, 1908.
39

40 -----
Attorney for plaintiff.

41 -----
42 Attorney for defendant.

62

1 (PROPOSED AMENDMENTS TO DEFENDANT'S
 2 PROPOSED BILL OF EXCEPTIONS)

3
 4
 5 IN THE SUPERIOR COURT OF THE STATE OF
 6 CALIFORNIA, IN AND FOR THE COUNTY OF
 7 LOS ANGELES
 8

9		
10	MATTIE S. FARNUM,	} Plaintiff,
11		
12	vs.	
13	KERN VALLEY BANK (a Corporation),	
14		Defendant.
15		

16
 17 Comes now the plaintiff above named, and proposes the
 18 following amendments to defendant's proposed Bill of
 19 Exceptions :—

20
 21 Insert after the word " off," being the last word on line 5
 22 of page 2 of said proposed Bill of Exceptions, the words and
 23 figures " Volume 127 of."

24 Strike out the parenthesis after the word " evidence " on
 25 line 17, page 2 of said proposed Bill of Exceptions, and
 26 insert in lieu thereof the following words and characters,
 27 " and the said record is in the words and figures following,
 28 to wit :—(here insert copy of the said record)."

29 Strike out the parenthesis after the word " evidence," line
 30 22 of page 2 of said proposed Bill of Exceptions, and insert
 31 in lieu thereof the following words and characters, to wit :—
 32 " the said declaration of homestead as recorded, is in the
 33 words and figures following, to wit :—(here insert copy of
 34 said record)."

35 Insert a period after the word " wife," being the last word
 36 on line 7 of page 3 of the said proposed Bill of Exceptions.

37
 38 -----
 39
 40 -----
 41 Attorneys for Plaintiff above named.
 42

63

(NOTICE OF APPEAL)

IN THE JUSTICE'S COURT OF THE FOURTEENTH
TOWNSHIP, COUNTY OF KERN, STATE OF
CALIFORNIA

C. P. BENNETT,

Plaintiff,

vs.

ZENDA MINING AND MILLING COMPANY (a
Corporation),

Defendant.

NOTICE
OF
APPEAL

To E. N. Dearborn, Justice of said Court, and to C. L.
Claffin, Attorney for said Plaintiff.

You, and each of you, will please take notice that the
defendant in the above entitled action hereby appeals to the
Superior Court of the County of Kern, State of California,
from the judgment made and entered in the Justice's Court
of said Fourteenth Township on the 7th day of February,
1909, in favor of the plaintiff in said action and against said
defendant, and from the whole thereof.

This appeal is taken on questions of both law and fact.

Dated this 28th day of February, 1909.

Attorneys for Defendant.

64

(DECREE OF FORECLOSURE AND ORDER OF SALE)
IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF
SAN JOAQUIN

OMAR M. LEE,

Plaintiff, -

U.S.

HAZEL RAWLINGS.

Defendant.

DECREE OF
FORECLOSURE
AND ORDER
OF SALE

This cause came on regularly to be heard in open Court on the 29th day of November, 1909, Lain Moynier, Esq., appearing for Plaintiff, and Cecil Baker, Esq., for the Defendant.

The Court having heard all the evidence and proofs produced herein, and duly considered the same, and being fully advised in the premises, and it appearing therefrom to the satisfaction of the Court :

FIRST: That Hazel Rawlings, the above named Defendant, has been duly and regularly summoned to answer unto the Plaintiff's complaint therein, and that the said Hazel Rawlings, the Defendant herein, has made default in that behalf, and that the default of such Defendant for not appearing and answering unto Plaintiff's Complaint has been duly and regularly entered herein ;

SECOND: That on the _____ day of _____, 190 , the Plaintiff herein caused to be filed and recorded in the office of the County Recorder of the County of San Joaquin a notice of the pendency of this suit, containing the names of the parties thereto, the object thereof, and also a true and correct description of the lands and premises affected thereby ;

THIRD: That there is now due and owing to the Plaintiff from the Defendant upon the promissory note and for money expended under the terms of said Mortgage, as set forth and described in Plaintiff's Complaint, the sum of Three hundred and seventy-five Dollars and thirty-nine cents, and that the Defendant, the said Hazel Rawlings, is personally liable for the whole amount thereof;

That there is also due Plaintiff from Defendant Twenty-four Dollars and sixty-one cents, costs, percentage, and necessary disbursements :

1 **FOURTH** : That the said sum of Twenty-four Dollars
2 and sixty-one cents, and Three hundred and seventy-five
3 Dollars and thirty-nine cents, making in all \$400.00, as
4 aforesaid, is a valid lien upon the lands and premises in
5 Plaintiff's Complaint, and hereinafter set forth and
6 described, and is secured by the Mortgage mentioned in
7 said Complaint ;

8 **FIFTH** : That each and all of the terms and conditions
9 of said Mortgage enforced and foreclosed, and the lands
10 and premises hereinafter set forth and described, have been
11 sold in the manner prescribed by law, and the proceeds
12 arising from such sale applied to and upon the payment
13 of said sum of money so due as aforesaid ;

14 **SIXTH** ; That each and all of the allegations and aver-
15 ments in Plaintiff's Complaint contained are true and correct ;

16 **NOW, THEREFORE**, on motion of Lain Moynier,
17 Counsel for Plaintiff,

18 **IT IS ADJUDGED AND DECREED**, that all and
19 singular the mortgaged premises mentioned in the said
20 Complaint and hereinafter described, or so much thereof
21 as may be sufficient to raise the amount due to the Plaintiff
22 for the principal and interest, and costs of this suit, and
23 expenses of sale, and which may be sold separately without
24 material injury to the parties interested, be sold at public
25 auction by the Sheriff of the County of San Joaquin in the
26 manner prescribed by law, and according to the course and
27 practise of this Court, and that the said Sheriff, after the
28 time allowed by law for redemption has expired, execute
29 a deed to the purchaser or purchasers of the mortgaged
30 premises on the said sale.

31 That the Defendant and all persons claiming, or to claim,
32 from or under, and all persons having liens subsequent to
33 said Mortgage by judgment or decree upon the land des-
34 cribed in said Mortgage, and their personal representatives,
35 and all persons having any lien or claim by or under such
36 subsequent judgment or decree, and their heirs or personal
37 representatives, and all persons claiming to have acquired
38 any estate or interest in said premises subsequent to the
39 filing of said notice of the pendency of this action with the
40 Recorder, as aforesaid, be forever barred and foreclosed of
41 and from all equity of redemption and foreclosed of and
42 from all equity of redemption and claim of, in and to said

1 mortgaged premises, and every part and parcel thereof,
2 from and after the delivery of said Sheriff's Deed.

3 AND IT IS FURTHER ADJUDGED AND DECREED,
4 that the purchaser or purchasers of such mortgaged
5 premises at such sale be let into possession thereof, and
6 that any of the parties to this action who may be in pos-
7 session of said premises, or any part thereof, and any person
8 who, since the commencement of this action, has come into
9 possession under them or either of them, deliver possession
10 thereof to such purchaser or purchasers, on production of
11 the Sheriff's Deed for such premises, or any part thereof.

12 AND IT IS FURTHER ADJUDGED AND DECREED,
13 that if the moneys arising from the said sale shall be
14 insufficient to pay the amount so found due the Plaintiff,
15 as above stated, with interest and costs, and expenses of
16 sale, as aforesaid, the Sheriff specify the amount of such
17 deficiency due to the Plaintiff in his return of said sale,
18 and that on the coming in and filing of said return, the
19 Clerk of this Court docket a judgment for such balance
20 against the Defendant, and that the Defendant, Hazel
21 Rawlings, pay to the said Plaintiff the amount of such
22 deficiency and judgment, with interest thereon at the rate
23 of 8 per cent. per annum from the date of said last mentioned
24 return and judgment, and that the Plaintiff have execution
25 therefor.

26 The lands and premises directed to be sold by this decree
27 are situated, lying and being in the County of San Joaquin,
28 State of California, and bounded and particularly described
29 as follows, to wit :

30 The East half of the South-west Quarter of the North-
31 west Quarter, and the South-west Quarter of the South-east
32 Quarter of the North-west Quarter, and the North-east
33 Quarter of the South-west Quarter of Section thirty-one
34 (31), Township three (3), North, Range eight (8) East,
35 Mount Diablo Base and Meridian, with all the buildings,
36 structures, and improvements thereon ;

37 TOGETHER with all and singular the tenements,
38 hereditaments, and appurtenances thereunto belonging or
39 in anywise appertaining.

40

41 -----
42 Judge of the Superior Court.

42 Done in open Court the 29th day of November, 1909.

65

(WRIT OF CERTIORARI)

A writ of certiorari is "a writ issued out of chancery, or a superior court, to call up the records of an inferior court, or remove a cause there depending, in order that the party may have more sure and speedy justice, or that errors and irregularities may be corrected. It is obtained upon complaint of a party that he has not received justice, or cannot have an impartial trial in the inferior court."

IN THE SUPERIOR COURT OF THE COUNTY OF
FRESNO, STATE OF CALIFORNIA

CHARLES COTTLE,

Plaintiff,

vs.

SAMUEL S. GAINER,

Defendant.

WRIT OF
CERTIORARI

THE PEOPLE OF THE STATE OF CALIFORNIA, to

The Hon. Dwight M. Griffith,

GREETING :

WHEREAS, it appears to us by the affidavit of J. E. Dyer, the party beneficially interested, that in a certain action pending before you, wherein Charles Cottle is plaintiff, and Samuel S. Gainer is defendant, you, exercising your judicial functions, have exceeded your jurisdiction, and that there is no appeal for any other plain, speedy or adequate remedy,

WE THEREFORE COMMAND YOU, that you certify and send to our Superior Court of the State of California, County of Fresno, at the Court House in the County of Fresno, on the 10th day of January, A.D. 1910, annexed to the writ, a transcript of the record and proceeding in the

1 action aforesaid, with all things touching the same as fully
2 and entirely as it remains before you, by whatsoever names
3 the parties may be called therein, that the same may be
4 reviewed by our Superior Court, and that our said Superior
5 Court may further cause to be done thereupon what it may
6 appear of right ought to be done, and in the meantime we
7 command the said Dwight M. Griffith to desist from further
8 proceedings in the matter so to be reviewed.

9
10 WITNESS, Hon. A. L. Clafin, Judge of
11 the said Superior Court of the County
12 of Fresno, at the Court House in the
13 said County of Fresno, and the Seal of
14 said Court, this 2nd day of January,
15 A.D. 1910.
16
17

18 _____
19 Clerk.
20

21
22 By _____
23 Deputy Clerk.
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66

IN THE SUPERIOR COURT OF THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALIFORNIA

CRANE COMPANY (a Corporation),
Plaintiff,

vs.

YELLOW ASTER MINING AND MILLING
COMPANY (a Corporation),
Defendant.

COMPLAINT FOR
GOODS, WARES AND
MERCHANDISE SOLD
AND DELIVERED

The plaintiff above-named complains of defendant and for cause of action alleges :

That plaintiff is now and has been during all the times herein mentioned a corporation created, organized and existing under and by virtue of the laws of the State of Illinois.

That defendant is now and has been during all the times herein mentioned a corporation created, organized and existing under and by virtue of the laws of the State of Nevada.

That heretofore, to wit, at said City and County of San Francisco, State of California, within a period of two years last past, said plaintiff sold and delivered to said defendant at the special instance and request of defendant, goods, wares and merchandise at agreed prices, amounting to the sum of ten thousand dollars, which said sum defendant promised and agreed to pay to said plaintiff.

That though often requested, no part of said sum has been paid by said defendant, but that said sum and every part thereof is now, and has been ever since the 23rd of October, 1907, due and wholly unpaid.

WHEREOF, plaintiff demands judgment against said defendant for the sum of ten thousand dollars, together with interest thereon from the 23rd day of October, 1907, at the rate of seven per cent. per annum, and for its costs and disbursements in this action.

WALTER D. MANSFIELD,
Attorney for Plaintiff.

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO. } ss. :

Walter D. Mansfield, being duly sworn, deposes and says :

That he is the attorney for the plaintiff in this action ; that he has read the foregoing complaint, and knows the contents thereof ; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true. That said plaintiff and all the officers thereof are absent from the State of California and from the city and county of San Francisco, where affiant resides, and for that reason this complaint is verified by said attorney, the affiant herein.

WALTER D. MANSFIELD.

Subscribed and sworn to before me }
this 13th day of December, 1909. }

(SEAL)

SAMUEL ROSENHEIM,

Notary Public for the City and County of
San Francisco, State of California.

67

IN THE SUPERIOR COURT, CITY AND COUNTY OF
SAN FRANCISCO, STATE OF CALIFORNIA

CRANE COMPANY (a Corporation),
Plaintiff,

vs.

YELLOW ASTER MINING AND MILLING
COMPANY (a Corporation),

AFFIDAVIT FOR
ATTACHMENT

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO. } ss. :

H. T. Lally, being duly sworn, says : That he is the agent and manager for Plaintiff in the above entitled action ; that the defendant in the said action is indebted to plaintiff in the sum of ten thousand dollars with interest from October 23rd, 1907, at the rate of 7 % per annum, over and above all legal setoffs and counter-claims, upon an express contract, for the direct payment of money, to wit, for goods, wares and merchandise sold and delivered to said defendant at its special instance and request within two years last past by plaintiff, and that such contract was made and is payable in this State, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge upon personal property.

That the said attachment is not sought, and the said action is not prosecuted, to hinder, delay or defraud any creditor or creditors of the said defendant.

H. T. LALLY.

Subscribed and sworn to before me }
this 13th day of December, 1909. }

SAMUEL ROSENHEIM,
Notary Public.

68

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE CITY AND COUNTY
OF SAN FRANCISCO

CRANE COMPANY (a Corporation),
Plaintiff,

vs.

YELLOW ASTER MINING AND MILLING
COMPANY (a Corporation),
Defendant.

UNDERTAKING ON
ATTACHMENT

WHEREAS, the above-named plaintiff has commenced, or is about to commence, an action in the Superior Court in and for the City and County of San Francisco, State of California, against the above-named defendant upon a contract for the direct payment of money, claiming that there is due to the said plaintiff from the said defendant the sum of ten thousand dollars, besides interest, and is about to apply for an attachment against the property of said defendant as security for the satisfaction of any judgment that may be recovered therein :

NOW, THEREFORE, We, the undersigned, residents and householders of and within the State of California, in consideration of the premises, and of the issuing of said attachment, do jointly and severally undertake in the sum of five thousand five hundred dollars, and promise to the effect, that if the said defendant recovers judgment in said action the plaintiff will pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the said attachment, and not exceeding the sum of five thousand five hundred dollars.

Dated the 13th day of December, 1907 :

N. A. JUDD. (SEAL)

CHRISTIAN FROELICH. (SEAL)

STATE OF CALIFORNIA, }
CITY AND COUNTY OF SAN FRANCISCO. }

N. A. Judd and Christian Froelich, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself, says : That he is a resident and householder within said State, and is worth the sum in the said undertaking specified, as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

N. A. JUDD.
CHRISTIAN FROELICH.

Subscribed and sworn to before me, }
this 13th day of December, 1907. }

SAMUEL ROSENHEIM,
Notary Public.

69

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO

CRANE COMPANY (a Corporation), Plaintiff, vs. YELLOW ASTER MINING AND MILLING COMPANY (a Corporation), Defendant.	}
--	---

PETITION FOR REMOVAL OF CAUSE

To the Honorable the Superior Court of the State of California,
in and for the City and County of San Francisco :

Comes now your petitioner, the Yellow Aster Mining and
Milling Company, a corporation, the defendant herein, and
respectfully shows to this Honorable Court :

I

That on the 13th day of December, A.D. 1907, the plaintiff
herein, the Crane Company, filed a complaint in the Superior
Court of the City and County of San Francisco, State of California,
praying for a judgment against the defendant for the sum of
\$10,000.00, with interest thereon at the rate of seven per cent.
per annum from the 23rd day of October, 1907, and for its costs
and disbursements, the said sum being claimed by the said
plaintiff upon a contract for the sale and delivery by the plaintiff
to the defendant at its special instance and request, of goods,
wares and merchandise at agreed prices and amounting to the
said sum of \$10,000.00.

II

That on said date and immediately after filing the said com-
plaint the said plaintiff caused a summons to be issued out of the
said Superior Court of the City and County of San Francisco in
the said action, and the same was served upon this defendant.

III

Your petitioner further avers that the time has not elapsed
wherein your petitioner is allowed under the practise and laws
of the State of California and the rules of the said Superior Court
of said City and County of San Francisco, in the State of California
to appear, plead, demur or answer the said complaint.

IV

Your petitioner further avers that at the time of the commencement of said suit, and ever since then, and at the present time, the plaintiff in the said action was and is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and was at the time of the commencement of the action a citizen and resident of the State of Illinois and has been such citizen and resident ever since, and still is a citizen and resident of said State ; and the defendant, the Yellow Aster Mining and Milling Company, was, at the time of the commencement of said suit, and ever since has been, and still is, a corporation organized under the laws of the State of Nevada, and is a citizen of the said State.

V

Your petitioner further avers that this is a controversy wholly between citizens of different states and who were such citizens of different states at the time of the commencement of said action.

VI

Your petitioner further avers that the petitioner, the said defendant, disputes the said claim of the said plaintiff, and denies all liability under the contract set out in the complaint, or for or on account of any of the matters therein alleged, and that the matter in dispute in this action exceeds the sum of \$2,000.00, exclusive of interest and costs.

VII

That the time for your petitioner, this defendant, to answer or plead to the complaint in said action has not expired and will not expire until the 24th day of December, 1907. And your petitioner herewith presents a good and sufficient bond, as provided by the statute in such cases, that it will, on or before the first day of the next ensuing session of the United States Circuit Court for the Northern District of California, file therein a transcript of the record of this action and for the payment of all costs which may be awarded by the said Court if the said Circuit Court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays that this Court proceed no further herein, except to make the order of removal as required by law, and to accept the bond presented herewith, and direct a transcript of the record herein to be made for said Court as provided by law, and as in duty bound your petitioner will ever pray.

J. S. CHAPMAN,

Attorney for the Petitioner, the
Yellow Aster Mining & Milling Company.

(Similar verification to the one attached to the Complaint.)

70

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO

CRANE COMPANY (a Corporation),
Plaintiff,

vs.

YELLOW ASTER MINING AND MILLING
COMPANY (a Corporation),
Defendant.

No. 78,898.

BOND ON REMOVAL OF CAUSE TO CIRCUIT COURT

KNOW ALL MEN BY THESE PRESENTS, that we, the Yellow Aster Mining and Milling Company, as principal, and the American Bonding and Trust Company, of the City of Baltimore, State of Maryland, as surety, are held and firmly bound unto Crane Company, the plaintiff in the above-entitled cause, its assigns and successors, in the sum of one thousand (\$1,000.00) dollars, lawful money of the United States of America, for the payment of which well and truly to be made, we and each of us bind ourselves, and each of us our successors, jointly and severally by these presents.

The conditions of this obligation are such that :

WHEREAS, the said Yellow Aster Mining and Milling Company has applied by a petition to the Superior Court of the State of California in and for the City and County of San Francisco, for the removal of a certain cause therein pending wherein the said Crane Company is the plaintiff and the said Yellow Aster Mining and Milling Company is the defendant, to the Circuit Court of the United States, Ninth Circuit, Northern District of California, for further proceedings on the grounds in the said petition set forth, and that all further proceedings in said action in said Superior Court be stayed ;

NOW, THEREFORE, if the said petitioner, the Yellow Aster Mining and Milling Company, shall enter in the said Circuit Court of the United States, for the Ninth Circuit, Northern District of California, aforesaid, on or before the first day of the next regular session, a copy of the records in said suit, including copies of the process against it and of all pleadings, depositions, testimony and further proceedings in the cause, and shall pay or cause to be paid all costs that may be awarded therein by said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void ; otherwise shall remain in full force and effect.

IN WITNESS WHEREOF, the said principal and surety have caused their corporate names to be hereunto subscribed and their corporate seals affixed, the 20th day of December, A.D. 1907.

(Seal of Yellow Aster Mining and Milling Company)

YELLOW ASTER MINING AND MILLING COMPANY,

By R. L. BURCHAM,

Secretary.

(Seal of American Bonding and Trust Company)

THE AMERICAN BONDING AND TRUST COMPANY
OF BALTIMORE CITY.

By JESSE W. LILIENTHAL,

Vice-President.

Attest. :

BRONTE M. AIKENS,

Assistant Secretary.

71

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO

CRANE COMPANY (a Corporation),
Plaintiff,

vs.

YELLOW ASTER MINING AND MILLING
COMPANY (a Corporation),
Defendant.

ORDER OF
REMOVAL OF
CAUSE

The petition of the defendant above named praying for a removal of the above-entitled cause from the said Superior Court of the State of California in and for the City and County of San Francisco to the United States Circuit Court, Ninth Circuit, Northern District of California, coming on regularly to be heard at this time, and it appearing to this Court that all the allegations of said petition are true, and that said petition is in due form of law, and that said defendant has its bond duly conditioned with good and sufficient sureties as provided by law, which bond is hereby approved,

And it further appearing that this is a proper cause for removal to said Circuit Court,

NOW, THEREFORE, it is hereby ordered and adjudged that this cause be, and it hereby is, removed to the United States Circuit Court for the Ninth Circuit, Northern District of the State of California, and the clerk is hereby directed to make up the record in said case for transmission to said Court forthwith.

Done in open Court this 23rd day of December, 1907.

FRANK J. MURASKY,
Judge of said Superior Court, Dept. No. 2.

72

IN THE CIRCUIT COURT OF THE UNITED STATES,
NINTH CIRCUIT, NORTHERN DISTRICT OF
CALIFORNIA

CRANE COMPANY (a Corporation), Plaintiff,	}	AMENDED COMPLAINT
vs.		
YELLOW ASTER MINING AND MILLING COMPANY (a Corporation),		
Defendant.		

Comes now the Crane Company, a corporation, plaintiff, by leave of Court first had and obtained, and files this its amended complaint, and for cause of action against the defendant, Yellow Aster Mining and Milling Company, a corporation, alleges :

I

That this plaintiff at all of the times herein stated was, and now is, and for more than two years last past has been, a corporation duly organized under the laws of the State of Illinois, conducting and carrying on business in the State of California.

II

That the defendant is and was at all of the times herein mentioned a corporation organized under the laws of the State of Nevada, conducting and carrying on business in the State of California.

III

That within two years last past at the City and County of San Francisco, State of California, plaintiff, at the special instance and request of defendant, sold and delivered to it goods, wares and merchandise, at agreed prices, amounting to the sum of sixty-two thousand one hundred and forty-four and 78/100 dollars (\$62,144.78), which said sum defendant promised and agreed to pay to this plaintiff. That defendant has paid thereon the sum of fifty-two thousand one hundred and forty-four and 78/100 dollars (\$52,144.78), and no more, leaving a balance due plaintiff of the sum of ten thousand dollars which said sum is

unpaid. Though often requested defendant has failed, neglected and refused to pay said balance of ten thousand dollars, or any part or portion thereof, but the same and every part thereof is now and has been ever since the 23rd day of October, 1907, due and wholly unpaid.

And for a further, separate and second cause of action, plaintiff herein alleges :

I

That this plaintiff at all of the times herein stated was, and now is, and for more than two years last past has been, a corporation duly organized under the laws of the State of Illinois, conducting and carrying on business in the State of California.

II

That the defendant is, and was at all of the times herein mentioned, a corporation organized under the laws of the State of Nevada, conducting and carrying on business in the State of California.

III

That heretofore, to wit, on the 24th day of March, A.D. 1907, plaintiff and defendant entered into the following agreement :

(Here follows agreement set forth in full.)

IV

That plaintiff duly performed all the terms and conditions of said agreement on its part to be performed.

V

Though the payment of said sum has been frequently demanded of defendant, it has failed, neglected and refused to pay the same or any part thereof.

That all of said goods, wares and merchandise were shipped by plaintiff and received by defendant at Johannesburg on or about ninety days prior to the 23rd of October, 1907.

WHEREFORE, plaintiff demands judgment against defendant for the sum of ten thousand dollars, together with interest thereon at the rate of seven per cent. per annum, from the 23rd day of October, 1907, until the entry of judgment herein, and for its costs of suit, and all other proper relief.

CAMPBELL, METSON & CAMPBELL,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,	} ss. :
NORTHERN DISTRICT OF CALIFORNIA,	
CITY AND COUNTY OF SAN FRANCISCO.	

(Here follows the usual verification.)

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IN THE CIRCUIT COURT OF THE UNITED STATES,
NINTH CIRCUIT, IN AND FOR THE NORTHERN
DISTRICT OF CALIFORNIA

CRANE COMPANY (a Corporation),
Plaintiff,
vs.
YELLOW ASTER MINING AND MILLING
COMPANY (a Corporation),
Defendant.

NOTICE OF MOTION
FOR LEAVE TO
FILE AMENDED
ANSWER

To the Plaintiff and Its Attorneys, Messrs. Campbell, Metson
& Campbell, and Walter Mansfield.

YOU WILL TAKE NOTICE that the defendant will, on
Monday, the 3rd day of August, 1909, at ten o'clock A.M. of said
day, or as soon thereafter as counsel can be heard for that purpose,
move the court at the courtroom of the United States Circuit
Court in the City and County of San Francisco, for leave to file
an amended answer in this cause, and copy of the proposed
amended answer is herewith served.

The motion will be made upon the ground that the fourth
paragraph of the third defense is misplaced, and should be
transposed to the conclusion of the second answer or counterclaim,
and made a part thereof.

No other change is made in the answer down to the end of the
second defense or counterclaim.

The third defense is only changed to the extent necessary to
complete it after the striking out of the 4th paragraph and
transposing it to the counterclaim.

And such amendment is proper to be made in order to make the
more orderly arrangement of the matters set forth in the answer,
and does not change in any manner the issues already raised.

FRANK MCGOWAN and
J. S. CHAPMAN,
Attorneys for Defendant.

(Endorsed) : Receipt of a copy hereof admitted this 27th day
of July, A.D. 1909, together with copy of amended answer.

Attorneys for Plaintiff.

NOTE TO THE STUDENT.—This endorsement is called an "Admission of
Service."

At a stated term, to wit, the July term, A.D. 1908, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 10th day of August, in the year of our Lord one thousand, nine hundred and nine. Present: The Honorable JAMES H. BEATTY, District Judge, District of Idaho, designated to hold and holding said Circuit Court.

CRANE COMPANY

vs.

YELLOW ASTER MINING AND MILLING
COMPANY.

No. 13,190.

ORDER GRANTING MOTION TO FILE AMENDED
ANSWER

ORDERED defendant's motion for leave to file an amended answer herein granted by consent, without prejudice to plaintiff's right to move for and obtain continuance of the trial hereof, should the new matter in said amended answer render it necessary.

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IN THE CIRCUIT COURT OF THE UNITED STATES,
NINTH JUDICIAL CIRCUIT, NORTHERN DISTRICT
OF CALIFORNIA

CRANE COMPANY (a Corporation), Plaintiff, <i>vs.</i> YELLOW ASTER MINING AND MILLING COMPANY (a Corporation), Defendant.	}
---	---

No. 13,190.

VERDICT

We, the jury, find in favor of the plaintiff, and assess the damages against the defendant at the sum of nine thousand 00/100 dollars (\$9,000.00), with interest added.

ALFRED J. MARCUS,
Foreman.

75

IN THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA

CRANE COMPANY (a Corporation),
Plaintiff,*vs.*YELLOW ASTER MINING AND MILLING
COMPANY (a Corporation),
Defendant.

No. 13,190.

JUDGMENT ON VERDICT

This cause having come on regularly for trial upon the 20th day of April, 1910, being a day in the March, 1910, term of this Court, before the Court, and a jury of twelve men duly impaneled and sworn to try the issues joined herein, and J. C. Campbell and Walter D. Mansfield, Esq., having appeared as attorneys for plaintiff, and J. S. Chapman and Frank McGowan, Esqs., having appeared as attorneys for defendant, and the trial having proceeded upon the 20th, 21st, 22nd, 25th, 26th and 27th days of April, and the 2nd day of May, 1910, before twelve jurors, and upon the 3rd, 4th and 5th days of May, 1910, by consent of the attorneys for the respective parties, before ten jurors, and evidence, oral and documentary, upon behalf of the respective parties having been introduced, and the evidence having been closed, and the cause, after arguments of the attorneys for the respective parties, and the instructions of the Court, having been submitted to the jury, and the jury, after due deliberation, having rendered the following verdict, which was ordered recorded, viz. :

" We, the jury, find in favor of the plaintiff, and assess the damages against the defendant at the sum of nine thousand 00/100 dollars (\$9,000.00/100) with the interest added. Alfred J. Marcus, Foreman " ; and the Court having ordered that judgment be entered herein in accordance with said verdict in favor of plaintiff and against defendant for the sum of nine thousand dollars with costs,

Now, by virtue of the law, and by reason of the premises aforesaid, it is considered by the Court, that Crane Company, a corporation, plaintiff herein, do have and recover of and from Yellow Aster Mining and Milling Company, a corporation, defendant herein, the sum of nine thousand dollars, together with its costs herein expended, taxed at \$631.60.

Judgment entered May 11, 1910.

SOUTHARD HOFFMAN,
Clerk.

A true copy.
(SEAL) Attest : SOUTHARD HOFFMAN,
Clerk.
By W. B. Beaizley,
Deputy Clerk.

76

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Nevada

IN EQUITY

MILLER & LUX (a Corporation),
Complainant,

vs.

THE RICKEY LAND AND CATTLE COMPANY
(a Corporation),

Defendant.

BILL OF
COMPLAINT

TO THE JUDGES OF THE CIRCUIT COURT OF THE
UNITED STATES FOR THE DISTRICT OF NEVADA :

Miller & Lux, a corporation organized and existing under the laws of the State of California, and having its principal place of business at San Francisco, California, and a citizen of the State of California, brings this its bill against the Rickey Land and Cattle Company, a corporation organized and existing under the laws of the State of Nevada, and having its principal place of business at Carson City, in the County of Ormsby, State of Nevada, and within the District of Nevada, and a citizen of the State of Nevada ; and thereupon your orator complains and says :

1. That your orator is a corporation organized and existing under the laws of the State of California, and has its principal place of business at San Francisco, in the State of California, and is a citizen of the State of California ; and it has been such corporation, and has had its principal place of business at the place aforesaid, continuously since the 5th day of May, 1897.

2. That the defendant, the Rickey Land and Cattle Company, is a corporation organized and existing under the laws of the State of Nevada, and has its principal place of business at Carson City, in the County of Ormsby, in the said State of Nevada, and within said District of Nevada, and is a citizen of the State of Nevada.

3. That on the 10th day of June, 1904, your orator exhibited to and filed in this Court its bill of complaint against one Thomas B. Rickey, and against many other persons ; which suit is numbered 731 on the equity docket of this Court.

4. That thereafter, on the said 10th day of June, 1904, this Court duly issued its writ of subpoena in said suit upon said bill of complaint, directed to the said Thomas B. Rickey and the other persons made defendants by said bill; and thereafter, on the said 10th day of June, 1904, the said writ of subpoena was duly served by the marshal of this district upon the said Thomas B. Rickey, and was thereafter served upon the other defendants in said suit.

5. That thereafter the said Thomas B. Rickey entered his appearance in said suit, and thereafter filed in this Court his plea to the jurisdiction of said Court, which plea was overruled by this Court, and the said Thomas B. Rickey was by this Court ruled to answer to said bill of complaint, and he has answered the same.

6. That the other defendants in said suit have entered appearances in said suit; and the said suit is now pending and undetermined in this Court as to all of the defendants thereto . . .

7. That the matter in dispute herein, to wit, the right of your orator to maintain its suit aforesaid without hindrance from or interference by any other court, exceeds, exclusive of interest and costs, the sum of two thousand dollars (\$2,000).

And your orator alleges that all of the said acts, doings, and claims of the said defendant herein are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises. In consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the strict rules of the common law, and can have relief only in a court of equity, where matters of this kind are properly cognizable and relievable, to the end therefore that your orator may have that relief which it can attain only in a court of equity, and that the said defendant may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator, and that the said defendant, its agents, servants, and attorneys, and all persons acting in aid of them or either of them, be enjoined and restrained from further prosecuting, as against your orator, either of the said actions so brought by it in the said Superior Court of the County of Mono, State of California, and from taking any further step whatsoever in either of said actions as against your orator, and that your orator may have such further or other relief as the nature of the case may require, and to your Honors may seem meet,

May it please your Honors to grant unto your orator a writ of subpœna, to be directed to said defendant, the Rickey Land and Cattle Company, a corporation, commanding it, at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further, to stand to, perform, and abide such further order, direction and decree therein as to this Honorable Court shall seem meet.

And may it further please your Honors, during the pendency of this suit, to issue your writ of injunction enjoining and restraining the said defendant, its agents, servants and attorneys, and all persons acting in aid of them or either of them, during the pendency of this suit, and until the further order of the Court, from further prosecuting, as against your orator, either of the said actions so brought by it in the said Superior Court of the County of Mono, State of California, and from taking any further step whatsoever in either of said actions as against your orator.

And may it further please your Honors to make and issue an order requiring the said defendant, the Rickey Land and Cattle Company, to show cause before this Honorable Court, at a time and place therein fixed, why such writ of injunction, pendente lite, as above prayed for, should not be issued, and, at the same time, and as a part of such order, to issue your temporary restraining order enjoining and restraining the said defendant, its agents, servants and attorneys, and all persons, acting in aid of them or either of them, until the hearing of such order to show cause, and until the further order of this Court, from doing all and any of the acts aforesaid.

MILLER & LUX,
Complainant.

By J. LEROY- NICKEL,
Vice-President.

DAVID BROWN,
Secretary.

W. C. VAN FLEET
W. B. TREADWELL
Solicitors for Complainant.

ISAAC FROHMAN,
Of Counsel for Complainant.

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO. } ss. :

J. Leroy Nickel, being duly sworn, upon his oath deposes and says : That he is the Vice-President of Miller & Lux, a corporation, the complainant above named ; that he has read the foregoing bill of complaint and knows the contents thereof ; that the same is true of his own knowledge, except as to the matters therein stated on information and belief ; and that as to those matters he believes the same to be true.

J. LEROY NICKEL.

Subscribed and sworn to before me, }
this 3rd day of January, 1909. }

(NOTARIAL SEAL)

GEO. T. KNOX,
Notary Public, in and for the City and
County of San Francisco, State of California.

(Endorsed) : No. 791. In Equity. In the Circuit Court of the United States for the District of Nevada. Miller & Lux, Complainants, *vs.* Rickey Land & Cattle Company, Defendant. Bill of Complaint. Filed January 4th, 1909. T. J. Edwards, Clerk. W. C. Van Fleet and W. B. Treadwell, Mills Building, San Francisco, Cal., Solicitors for Complainant.

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
Ninth Circuit

MILLER & LUX (a Corporation),	}	ORDER EXTENDING TIME TO DOCKET CAUSE
Complainant,		
<i>vs.</i>		
THE RICKEY LAND AND CATTLE COMPANY (a Corporation),		
Defendant.		

Good cause therefor appearing, it is hereby ordered that the time wherein defendant and appellant in the above entitled action may file the record thereof and docket the case with the clerk of this Court at San Francisco, California, may be enlarged and extended, so as to extend to and include the 23rd day of September, 1909, and it is so ordered.

Dated this 22nd day of August, 1909.

(Signed) WM. W. MORROW,
Circuit Judge.

(Endorsed) : No. 1366. In the United States Circuit Court of Appeals, Ninth Circuit, District of California. Miller & Lux, a corporation, Complainant, *vs.* Rickey Land and Cattle Company, a corporation, Defendant. Order extending time. Filed Aug. 24, 1908. F. D. Moncton, Clerk. Refiled Aug. 29, 1908. F. D. Moncton, Clerk.

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IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Nevada
No. 791

MILLER & LUX (a Corporation),
Complainant,
vs.
THE RICKEY LAND AND CATTLE
COMPANY (a Corporation),
Defendant.

ORDER TO SHOW
CAUSE WHY
INJUNCTION
PENDENTE LITE
SHOULD NOT
ISSUE

Good cause appearing therefor, by the verified bill of complaint of Miller & Lux, a corporation, complainant, on file herein, it is ordered that the said defendant, the Rickey Land and Cattle Company, a corporation, show cause before this Court, on the 13th day of March, 1910, at the hour of ten o'clock A.M., at the courtroom of this Court at Carson City, Nevada, why an injunction should not issue pending this suit, according to the prayer of said bill.

And it further appearing to the Court that there is danger of irreparable injury from delay, it is therefore further ordered that, until the hearing and determination of said motion for injunction, and until the further order of this Court, the said defendant, the Rickey Land and Cattle Company, a corporation, its agents, servants and attorneys, and all persons acting in aid of them or either of them, be and they are hereby enjoined and restrained from further prosecuting, as against said complainant, either of the two certain actions brought on the 15th day of October, 1909, by the said Rickey Land and Cattle Company, as plaintiff, against the said Miller & Lux, a corporation, and others, as defendants, in the Superior Court of the County of Mono, State of California, and respectively numbered on the register of said Superior Court 1055 and 1056.

And it is further ordered that, before said restraining order takes effect, the said complainant file in this Court a bond, approved by a judge of this Court, in the sum of ten thousand dollars (\$10,000), conditioned according to law.

And it is further ordered that a copy of this order be served upon the said corporation defendant, and on one of its attorneys (namely, on either Mr. James F. Peck, or Mr. Charles C. Boynton, or Mr. William O. Parker), on or before the 30th day of January, 1910.

THOMAS P. HAWLEY,
Judge.

(Endorsed) :

No. 791
CIRCUIT COURT
of the
UNITED STATES
for the
DISTRICT OF NEVADA.

MILLER & LUX,
Complainant,
vs.
RICKEY LAND & CATTLE COMPANY,
Defendant.

ORDER TO SHOW CAUSE
Why Injunction Pendente Lite
should not Issue.

Filed January 4th, 1910.

T. J. EDWARDS,
Clerk.

(ACTION ON NOTE.—MISSOURI)

STATE OF MISSOURI, } ss. :
JASPER COUNTY. }

IN THE CIRCUIT COURT OF JASPER COUNTY,
MISSOURI, NOVEMBER TERM, 1909

CHARLES T. WILEY,

Plaintiff,

vs.

DRURY WEIMAN,

Defendant.

ACTION ON NOTE

Plaintiff for his cause of action says that defendant, on the eighteenth day of July, 1909, by his promissory note of that date, by him duly executed, promised, for value received, to pay to plaintiff in one year after the date thereof, THREE HUNDRED DOLLARS, with interest from date of note at the rate of seven per cent. per annum ; said note being filed herewith and marked exhibit "A" ; that defendant has failed and refused to pay any part of said note and interest, all of which remains due and unpaid.

WHEREFORE, plaintiff prays judgment for the sum of THREE HUNDRED DOLLARS, together with interest thereon at seven per cent. per annum, from the date of said note.

ARTHUR C. CUNEO,
Attorney for Plaintiff.

80

(MISSOURI MOTION FOR COSTS)

IN THE CIRCUIT COURT OF LAWRENCE COUNTY,
MISSOURI, APRIL TERM, 1909

TEMPLE SUGAR REFINING COMPANY,
Plaintiff,

vs.

CITIZENS SAVINGS BANK,
Defendant.

MOTION FOR
COSTS

NOW comes the defendant and moves the Court to require plaintiff to give security for costs in this action, for the reason that said plaintiff is an insolvent corporation, that there are large claims against it, and an unsatisfied judgment in this court for the sum of Forty-one thousand Dollars (\$41,000.), and that said plaintiff has no property out of which the costs can be collected.

WHEREFORE, defendant states that it ought not to be compelled to defend this suit until a good and sufficient cost bond is filed.

HENRY H. CONSTANT,
Attorney for Defendant.

STATE OF MISSOURI, }
COUNTY OF LAWRENCE. } ss. :

Henry H. Constant, being duly sworn upon his oath, says, that the facts stated in the above motion for costs are true, as he verily believes.

STANFORD SWEETSER,
Clerk of Court.

Subscribed and sworn to before me, this first day of August, 1909.

My term as a Notary Public expires the 14th day of December, 1910.

WILLIAM R. FEINGOLD,
Notary Public.

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SUBPŒNA AD RESPONDENDUM, NEVADA

DISTRICT OF NEVADA, SS. :

The President of the United States of America, to
The Rickey Land and Cattle Company, a Corporation,
Greeting :

You are hereby commanded that you personally appear before the Judges of the Circuit Court of the United States for the District of Nevada, in the Ninth Judicial Circuit, on the 6th day of February, 1910, to answer unto a bill of complaint exhibited against you in said court by Miller & Lux, a corporation ; and to do further and receive whatever said court shall have considered in that behalf ; and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, and the seal of said Circuit Court hereunto affixed, at Carson City, Nevada, on this 4th day of January, 1910, and of the year of the Independence of the United States the 129th.

Attest : T. J. EDWARDS,
Clerk.

W. C. VAN FLEET,
W. B. TREADWELL,
Solicitors for Complainant.

ISAAC FROHMAN,
Of Counsel for Complainant.

Memorandum : The defendant is to enter its appearance in the above-mentioned suit, in the clerk's office at Carson City, Nevada (Federal Building), on or before the day at which the above subpœna is returnable, otherwise the bill may be taken pro confesso.

T. J. EDWARDS,
Clerk.

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(MOTION FOR NEW TRIAL.—MISSOURI)
IN THE CIRCUIT COURT OF JASPER COUNTY,
MISSOURI, SEPTEMBER TERM, 1909

OLIVER CORNWALL,

Plaintiff,

vs.

JOHN R. WHITTEMORE,

Defendant.

MOTION FOR A
NEW TRIAL

Now, at this day, comes the above-named defendant and moves the Court to set aside the verdict of the jury in this case, and judgment rendered herein, and grant the defendant a new trial for the following reasons, to wit :

I

Because the Court erred in admitting irrelevant, incompetent and immaterial evidence offered by the plaintiff.

II

Because the Court refused to admit competent and material evidence offered by the defendant.

III

Because the Court erred in refusing to give proper instructions offered by the defendant.

IV

Because the Court erred in giving improper instructions in behalf of the plaintiff over the objections of the defendant.

V

Because the verdict of the jury is against the evidence, and the law and the evidence.

VI

Because there is no evidence to support the verdict in the case, and the Court erred in submitting the case to the jury at all.

Defendant's Attorney.

83

(CONTEST NOTICE)

DEPARTMENT OF THE INTERIOR, UNITED STATES
LAND OFFICE

VISALIA, CALIF., MARCH 29, 1909.

A sufficient contest affidavit having been filed in this office by E. BRIDGMAN, contestant, against homestead entry No. 9270, made May 7th, 1895, for N. E. 1/4 Section 34, Township 25 S. Range 30 E. M. D. M. by OTTINE FRIEDRICKSEN, contestee, in which it is alleged that: said Ottine Friedrichsen has been absent from said land for more than three years with intent to abandon same, and without any permit from the proper authorities of the United States, and said Ottine Friedrichsen has not made the improvements required by the laws of the United States to be made on lands in order to acquire same under the laws of the United States providing for the securing of homesteads, and that said alleged absence from said land was not due to his employment in the Army, Navy or Marine corps of the United States in time of war,

Said parties are hereby notified to appear, respond and offer evidence touching said allegation at 10 o'clock A.M. on May 15th, 1909, before the Register and Receiver at the United States Land Office in Visalia, Calif.

The said contestant having, in a proper affidavit, filed Oct. 11th, 1901, and Sept. 7th, 1901, set forth facts which show that after due diligence, personal service of this notice cannot be made, it is hereby ordered and directed that such notice be given by due and proper publication.

GEO. W. STEWART,
Register.

A. H. SWAIN,
Receiver.

84

(ASSIGNMENT OF CLAIM—TEXAS)

THIS ASSIGNMENT made the day of June, 1909, by JOHN L. SMITH, of the City of Beaumont, State of Texas, to M. N. CAMPBELL, wife of J. A. Campbell, of the City of Bakersfield, County of Kern, State of California,

WITNESSETH :

That for and in consideration of the sum of one dollar, gold coin of the United States of America, to me in hand paid by said M. N. Campbell, the receipt whereof is hereby acknowledged, I, John L. Smith, do hereby sell, assign and transfer, and forever set over to said M. N. Campbell, her heirs and assigns, all my right, title and interest, claim, demand or equity against A. E. Martin, of the County of Santa Barbara, State of California, or against Burr Smith, of the same County, or both of them jointly or severally, for money due me, to wit : the sum of Two hundred and fifty Dollars, gold coin, for services rendered in and about one Standard Oil Drilling rig, and as commission or compensation due me for effecting the sale thereof on or about the 1st day of April, A.D. 1909, to C. C. Murdock, which said sale was made for the sum of Fourteen hundred and fifty Dollars, and of which all money or value over and above Twelve hundred Dollars is due me. And I likewise assign and set over to said M. N. Campbell all my claim against said E. A. Martin and Burr Smith, or either of them, by reason of money had and received by them or either of them on my account.

WITNESS my signature the day and year first herein written.

85.

(ILLINOIS DEED)

THIS INDENTURE, made this 10th day of October, 1909, by and between HENRY F. CURTIS, of the City of Chicago, County of Cook, and State of Illinois, of the first part, and THOMAS MAHAFFY, of the same place, of the second part.

WITNESSETH : That for and in consideration of the sum of Nine hundred (\$900.) Dollars, in hand paid by the party of the second part to the party of the first part, at or before the ensembling and delivery of these presents, the receipt of which is hereby acknowledged, the said party of the first part has bargained and sold, and by these presents does grant, bargain, sell, remise, release and convey unto the said party of the second part, his heirs and assigns forever, all that certain plot, piece, or parcel of land situated, lying and being in the City of Evanston, County of Cook, and State of Illinois, bounded as follows :

Commencing at the south-west corner of lot sixty-three (63), in Tolland and Harris's addition to Evanston ; thence in a northerly direction to a point in the North line of Section four (4), Township seven (7), Range sixteen (16), intersected by a continuation of the northerly line of lot twenty-five (25) in said addition, thence southerly to the northerly corner of said lot sixty-three (63), thence along the eastern line of said lot sixty-three (63), and twenty-five (25) feet to the beginning, excepting a strip of land eight (8) rods wide, adjoining the easterly end of said lot, for a street, and being part of what is known as " Johnson Street," together with all the tenancies, appurtenances, hereditaments thereto belonging, or in anywise pertaining, to convey and to hold the same to the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered }
In the Presence of

----- (SEAL)

86

(CALIFORNIA POWER OF ATTORNEY)

KNOW ALL MEN BY THESE PRESENTS: That I, E. BRADY, of Kern County, California, do hereby appoint JOHN KELLY my true and lawful attorney, for me and in my name, place and stead to sell or otherwise dispose of for value, all of my capital stock in the Randsburg Exploration Co., a corporation formed and doing business under and by virtue of the laws of the State of California, and being two thousand (2,000) shares.

And I hereby authorize my said attorney to do all acts and things necessary to be done in connection with the disposal of said capital stock as fully as I might or could do if personally present, with full power of substitution and revocation; and I hereby ratify and confirm all that my said attorney, or his substitute or substitutes, shall lawfully do, or cause to be done, by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of April, A.D., one thousand nine hundred and nine.

----- (SEAL)

STATE OF CALIFORNIA, }
COUNTY OF KERN. } ss. :

On April 24, 1909, before me personally appeared E. Brady, to me known to be the same person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

-----Notary Public,
County of Kern, State of California.

87

(REVOCATION OF POWER OF ATTORNEY)

KNOW ALL MEN BY THESE PRESENTS, That whereas I, EDWARD BRADY, in and by my letter of attorney bearing date of August 24, 1909, did make, constitute and appoint JOHN KELLY my attorney, as by my said letter of attorney will more fully and at large appear,

NOW KNOW YE, That I, the said Edward Brady, have revoked, countermanded, and made void, and by these presents do revoke, countermand, and make void the said letter of attorney above mentioned, and all power and authority thereby given or to be given to the said John Kelly.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this third day of December, 1909.

IN THE PRESENCE OF

----- }

----- (SEAL)

STATE OF CALIFORNIA, }
COUNTY OF KERN. } ss. :

On December 3, 1909, before me personally appeared Edward Brady, to me known to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

----- Notary Public,
County of Kern, State of California.

88

(CALIFORNIA PROXY)

KNOW ALL MEN BY THESE PRESENTS, That I, HIRAM S. COLE, of San Francisco, do hereby appoint George W. Woodworth, of Chicago, my attorney for me in my stead, to vote as my proxy, at a certain election of directors of the Standard Iron Works, to be held on the 31st day of March, 1910, crediting him with the number of votes that I should be entitled to cast if personally present.

Witness my hand and seal this Fourth day of March, 1910.

----- (SEAL)

89

(CALIFORNIA QUIT-CLAIM DEED)

THIS DEED made on January 25, 1910, by EDWARD C. SMITH, of Oakland, California, as Grantor, and MARTIN V. HINTON, of Fruitvale, California, as Grantee.

WITNESSETH, that said Grantor, in consideration of One Hundred (100) Dollars, to him in hand paid by said Grantee, the receipt of which is hereby acknowledged, does, by these presents, remise, release, sell, convey and quit claim unto said Grantee, his heirs and assigns forever, all the right, title, interest, claim and demand, which he has in and to the real estate, situated in the City of Oakland, State of California, described as follows : Lot No. one (1) of City Block Number one hundred and forty-nine (149) of said City.

TO HAVE AND TO HOLD said real estate, together with the improvements thereon, and all and singular the appurtenances and privileges thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of said Grantor, either in law or equity to the only proper use, benefit and behoof of said Grantee, his heirs and assigns forever.

IN WITNESS WHEREOF, said Grantor has hereunto set his hand and seal the day and date first above written.

----- (SEAL)

STATE OF CALIFORNIA, }
COUNTY OF ALAMEDA. } ss. :

On January 27, 1910, before me personally appeared Edward C. Smith, to me known to be the same person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal.

----- Notary Public,
County of Alameda, State of California.

90

(CALIFORNIA BILL OF SALE)

KNOW ALL MEN BY THESE PRESENTS, That I, OLLIN F. ROGERS, of Ventura, in the County of Ventura, and State of California, for and in consideration of the sum of Four Hundred and Twenty-Five (\$425.00) Dollars, good and lawful money of the United States, to me in hand paid, the receipt of which is hereby acknowledged, do hereby sell, assign, transfer, and set over to CHARLES T. CONGER, of the same place, all those certain articles and personal property hereinafter mentioned to-wit, located at Monterey, in the County of Monterey, and State of California :

One horse and surrey, one Turkish rug, five oil paintings, one easy chair.

TO HAVE AND TO HOLD the same unto the said Charles T. Conger, his executors, administrators, and assigns forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of October, in the year 1909.

----- (SEAL)

IN THE PRESENCE OF

91

(QUIT-CLAIM DEED FOR INDIANA)

THIS INDENTURE WITNESSETH, That ADELBERT WEABER, a single man, of the City of Elkhart, of Elkhart County, in the State of Indiana, does hereby

CONVEY AND QUIT CLAIM

to VERNA McCOLLUM, of La Grange County, in the State of Indiana, for the sum of Six Hundred and Twenty-five Dollars, the receipt whereof is hereby acknowledged, the following Real Estate in Elkhart County, in the State of Indiana, to-wit :

The North-east quarter of the North-east quarter of Section Six (6), Town Thirty-seven (37) North, Range Five east, containing Forty (40) Acres of land, be the same more or less.

IN WITNESS WHEREOF, the said Grantor has hereunto set his hand and seal this 18th day of January, 1910.

----- (SEAL)

STATE OF INDIANA, ELKHART COUNTY, SS. :

Before the undersigned, a Notary Public in and for the said County, personally came Adelbert Weaber, and acknowledged the execution of the annexed Deed.

Witness my hand and Notarial Seal, this 18th day of January, 1910.

Notary Public.

My commission expires September 20, 1910.

92

(ILLINOIS FORM OF WILL)

I, John Smith, of the city of Chicago, county of Cook, State of Illinois, being in good health of body and of sound and disposing mind and memory, and being desirous of settling my worldly affairs while I have strength and capacity to do so, do make, publish and declare this my last will and testament, that is to say :

FIRST : I give and bequeath to my beloved wife, Verna Smith, the sum of \$5,000.00 ; also all the household furniture in my dwelling house, and also the said dwelling house for and during her natural life.

SECOND : To my eldest son, Hannon Smith, I give and devise said dwelling house, after the decease of my said wife, to him and his heirs forever.

THIRD : To my second son, Lonnie, I give and devise the sum of five thousand dollars ; also my gold watch and chain.

FOURTH : To my youngest son, Glenn, I give and devise my three lots in Jacksonville, Illinois, to have and to hold to him and his heirs and assigns forever.

AND LASTLY, all the rest, residue and remainder of my personal estate I give and bequeath to my brother, Loyal Smith, his heirs and assigns forever.

I hereby appoint Franklin W. Adams the sole executor of this my last will and testament. I hereby revoke all former wills by me made.

IN WITNESS WHEREOF, I hereunto set my hand and seal at Chicago aforesaid this 12th day of December, Nineteen Hundred and Nine.

Signed and sealed by said John Smith, who at the same time published and declared the same, as and for his last will and testament, in the presence of us, who in his presence, and in the presence of each other, and at his request, have hereto subscribed our names as witnesses.

(LETTERS RELATING TO LAW WORK)

Mr. John Henry Bell,
121 West 79th Street, City.

My dear young Friend :

Your pleasant letter of the 19th inst. was received and read by me with much interest. I did not know that you were studying shorthand, or were interested in law work in connection therewith, but am glad to learn that you find it fascinating. You will certainly find it very useful as well.

I note what you say in regard to some of the expressions contained in the legal documents you have been writing, and it will give me pleasure to answer your inquiries as to their meaning.

The term *costs*, which is so often used in Court Documents, does not include counsel fees, the pay of the jurors, or the stenographic record of the case. Each party pays his own lawyer for conducting his case, and they divide the cost of the stenographic record, while the County pays the jurors. Therefore, the costs which go with the judgment against the unsuccessful party include only what are known as "docket fees" (*i.e.*, the cost of filing the various papers with the Court), the pay of witnesses, and the expenses incidental to the taking of depositions. In New York, witnesses receive \$1.25 a day, and where they are summoned from outside the District, their transportation here and back and their hotel expenses, while here, are paid.

This is all I have time for in this letter, but I will write you again soon.

Affectionately yours,

Mr. John Henry Bell,
121 West 79th Street, City.

My dear John :

When last I wrote I promised that I would, ere long, write you again on the subject of my former letter.

You do not, I notice, seem to be able to get quite clearly in your mind the distinction between *Executor* and *Executrix*, and *Administrator* and *Administratrix*. The former term is used to designate a person named by the Will of another to *execute*, or carry out, the provisions of that will, the endings of the words denoting merely the gender. An administrator, on the other hand, is one appointed by the court to settle the estate of a person dying intestate, *i.e.*, without having made a will.

In such cases, either of the following persons may be appointed the administrator, in the order named : 1st, the decedent's widow ; 2nd, his sons ; 3rd, his father ; 4th, his brothers ; 5th, his sisters ; 6th, his grandchildren ; 7th, any other next of kin ; 8th, the creditors of the deceased, the creditor first applying, if otherwise competent, being given the preference.

In case a married woman dies intestate, her husband is entitled to be appointed as administrator. He is liable for her debts only to the extent of the assets received by him.

The matter of *dower* seems to be troubling you somewhat. Perhaps a brief explanation of the meaning of this word, and its use in law work, will help you. The word itself means a widow's life portion of the income from all lands and real property held by her husband during the period of her marriage to him. You should be careful not to confound this word with *dowry*, for which it is sometimes erroneously used, for a dowry, you know, is the money, goods, or estate which a woman brings to her husband in marriage.

The right of dower is recognized in all the States of the Union excepting Indiana and California, where there is what is known as "community property," or "community interest," *i.e.*, the right

of a wife or widow to share equally in property acquired by the husband or wife after marriage through earnings or investment, but not by gift, bequest, devise, or descent, such property being considered the separate property of the husband or wife, respectively. The husband has the management and control of the community property, with the absolute power of disposition, other than testamentary, provided, however, that he cannot make a gift of such community property, or convey the same without a valuable consideration, unless the wife, in writing, consent thereto, and provided also that no sale, conveyance, or incumbrance of the furniture, furnishings, and fittings of the home, or of the clothing and wearing apparel of the wife, or minor children, which is considered community property, shall be made without the written consent of the wife.

At the widow's decease, her one-third interest, which is generally conceded to be the proportion, except in the States mentioned, to which she is entitled, descends to the *heirs of her husband*.

Hoping this will make the matter clear to you, I am, with regard,

Yours very truly,

My dear friend, John :

Once more I take pleasure in writing you in answer to your last letter, and in giving you a few words of advice before you enter upon the position which I am so glad to learn you have succeeded in obtaining.

In the first place, let me say that those Latin phrases which you have encountered in some of your legal work are not so difficult as they may appear. Besides those you mentioned, I might name here a few of the more common ones, and give their definitions :

Ad litem, to (or in) the suit.

A fortiori, from stronger reasoning.

Alibi, in another place.

A priori, from the former.

Bona fide, in good faith.

Capias, a writ for the arrest of the defendant.

Caveat, that he beware ; a warning.

Certiorari, a writ to call up the records of an inferior court, or to remove a cause there depending, in order that the party may have more sure and speedy justice.

Cestuique trust, persons for whose use another has title to lands, etc.

De bene esse, as being well done for the present ; conditional.

De facto, in fact.

De jure, in law.

Et alium, and another.

Et alios (et als.), and others.

Ex parte, without opposition.

Ex post facto, by a subsequent act.

Ex relatione (Ex rel.), " at the relation " of.

Fieri facias, cause it to be done.

Habeas corpus, " That you have the body " ; a writ by which the legality of an imprisonment is investigated.

In esse, in existence.

In re, in the matter of.

In statu quo, as it was.

Laches, neglect.

Mens sana in corpore sano, a sound mind in a sound body.

Nolle prosequi, to be unwilling to proceed.

Nolens volens, willing or unwilling.

Non compos mentis, insane, or of unsound mind.

Non constat, it does not appear.

Non est, not to be found.

Nulla bona, no goods.

Nunc pro tunc, now for then.

Parol, verbal.

Pendente lite, during the action.

Per capita, by the head ; share and share alike.

Per stirpes, by the stock ; a division according to age.

Prima facie, at first view.

Pro rata, at the rate.

Quantum meruit, as much as he deserved.

Quid pro quo, a mutual consideration.

Res adjudicata, matters adjudicated.

Res gestae, subject matter.

Sine die, without day.

Sine qua non, an indispensable condition.

Venue, place of trial.

While the foregoing are but a few of the many expressions which you will come across, they are among the most common, and you would be perfectly justified in asking your employer to repeat any phrase not included among the foregoing the first time you heard it, if you did not understand it; but this list you should memorize.

Whatever you do, try and remember that the main object, in writing shorthand, is to be able to get down quickly what a speaker says, and afterward to render it into correct longhand. With this object in view, you should regard every Exercise which is dictated to you for practise as though it were a most important business letter or legal document, and as though the weightiest results hung upon your accurate transcription of your notes.

I read the other day of a stenographer to whom an affidavit had been dictated, and in which the following sentence occurred: "And the deponent aforesaid has paid to the Receiver for the benefit of the creditors \$70,000." The Receiver in the case denied the statement, and had the lawyer who dictated it, and who was the deponent in the affidavit, indicted. An investigation showed that the stenographer had made a mistake in transcribing his notes, by omitting the word "and" in the statement, which should have read, "And the deponent aforesaid has paid to the Receiver, *and* for the benefit of creditors, \$70,000." It turned out that the lawyer had actually paid the Receiver in question \$7,000, and the remaining \$63,000 to the creditors, the parties to whom it belonged. The lawyer then wrote a letter to the District Attorney explaining the mistake, and the indictment was at once dismissed. You can readily imagine how long that careless stenographer held his position after his mistake was discovered.

The moral of this is obvious. Profit by it.

Your true friend,

Friend John :

Your interesting letter of recent date, telling me how well you are doing in your new position, and that you are trying to profit by the suggestions I have been giving you in our correspondence, was very welcome. I am glad you are trying to be more accurate. You will find that it will pay, not only in shorthand and typewriting but in everything you do. Since writing you last I heard of another instance where the omission of a single word cost the Western Union Telegraph Company \$120.10. A certain party sent a dispatch directing a broker to sell a Michigan lot, but explained that "no commission would be paid." In transmitting the dispatch the word "no" was dropped. The agent sold the lot, sued for and obtained his commission from the principal. The latter therefore came back on the Telegraph Company, and recovered a judgment for \$120.10, the Supreme Court holding that the company's agents were negligent, as they should have discovered that the number of words contained in the dispatch as received did not correspond with the "check" number.

I would also advise you to read as much shorthand as possible, for this will enlarge your vocabulary, and familiarize you with the appearance of the outlines. You should read intelligently, endeavoring to impress each new outline on your mind, so that it can be readily recalled. Indeed, as has been well said, you should "think" shorthand, that is, you should constantly associate the outlines for the words which you hear with the words themselves, and that not in an arbitrary way, but by building up the word syllable by syllable, or stroke by stroke, until the completed form stands before you.

Now, I fear you will think this an extremely long letter, but the opportunity to help you was such a good one, I could not afford to let it go by.

Especially keep up your practise, even after you are in a position, and, when taking dictation, if your employer goes too rapidly for you, *stop him* by calling out the *last consecutive word* you have been able to write ; but don't say "What did you say?"

or "Please repeat"; and don't take down a mere jargon of words which you do not understand. Follow the sense of the dictation, and see that your transcript makes sense before it is handed in. Do not write "We send you the set of *truths*," when your employer dictated "proofs," and do not transcribe "prodigies of valor" as *pedigrees of valor*. Above all, do not omit a word, either in the dictation or in the transcript. This is the unpardonable crime in the eyes of a business man, and has cost many a novice his job.

Another word of caution : Don't waste any time, if you make a mistake, in trying to convince your employer that you are right and he is wrong. The chances are he isn't; and if he is, he won't want you to tell him so. You can't prove it to him from your notes, for he won't understand shorthand, and so you gain nothing, and may lose a good deal by arguing the matter. If he should happen to make a grammatical slip occasionally, quietly correct it in your transcript, and say nothing.

And this is my last word to you : Be patient, be alert, be intelligent, be accurate, and you will soon be found by your employer to be invaluable.

Yours, with best wishes,

Mr. Gordon Hay,
San Francisco, Calif.

Dear Sir :

I have been thinking over our conversation at the close of to-day's session, and I write to say that I realize very clearly the difficulty under which you labored when giving your testimony. It was a great strain upon you to submit to the very sharp cross-examination to which you were subjected, and yet I cannot see that our opponents succeeded in weakening our case in the least.

I desire, however, to call your attention to one or two points which may prove of value on the next hearing.

When you said that you were not quite sure whether Walton was present or not at the signing of the mortgage on that property in 155th Street, you were treading on dangerous ground. I shall, however, in the redirect, endeavor to make that point very clear, for a little reflection on your part will enable you to recall his presence there with perfect clearness.

There was another little matter to which I wished to call your attention, but I think that it will be better for me to see you personally about it, and to that end, I will ask you to call at my office to-morrow afternoon, between three and five o'clock, in order that we may have an opportunity of talking this thing over.

Yours very truly,

To the President of the
Third National Bank,
Big Rapids, Mich.

Dear Sir :

When I carried our case to the Court of Appeals, I am bound to admit that I was not very sanguine of a favorable issue, since the lower Court was so very strong in its rulings on the evidence relating to those stolen bonds. I have just been informed, however, that we have won, on the ground that the Bank was an innocent holder and must be protected to the extent of its property interest in the bonds. It stands to reason that, the bonds being held as collateral for the amount loaned to Van Anberg, your Bank must be preserved harmless from loss by reason of any claim of theft made by the People's Savings Bank, or any other institution. You, of course, had no means of knowing that those bonds had been stolen from the People's Savings Bank, and you accepted them in perfect good faith, and therefore the decision is an eminently just and righteous one.

I congratulate you thereupon, and will write you again within a few days, and report what steps have been taken toward a settlement of the case.

Very truly yours,

Elijah T. Ferris, Esq.
Providence, R.I.

Dear Sir :

Your report of the 19th inst. was duly received, for which thanks. We are advised by our clients to let the matter remain *in statu quo* until the senior partner can get an opportunity of calling upon you, which he expects to be able to do early next week. Please hold on to the mortgage until that time, and take no further steps in the meanwhile. I feel quite sure that there is some underhand work going on, but this will be revealed as soon as Mr. Robinson has examined the papers.

Yours truly,

Mr. Ezra Foley,
Hartford, Conn.

Dear Sir :

I have the honor to inform you that the Appellate Division of the Supreme Court has just handed down a decision in the matter of your application for damages against the Fremont House. Your chief contention was, as I recall it, that the health of your family was placed in jeopardy by the breaking out of scarlet fever in the hotel, and that you were justified in vacating the apartments which you were occupying there under a one year's lease, and refusing to pay rent therefor while there was any possibility of contagion.

The decision, I regret to say, is unfavorable to our view of the case, and judgment has been entered against you. I am very sorry for this, as I was sure we had a clear case. As a matter of fact, we did have, so far as the matter of damages was concerned, had you remained in the hotel and been injured thereby ; but the Court took the ground that the vacating of the premises was an act entirely of your own volition, and that you were bound to pay the rent therefor precisely as if the apartment had continued to be occupied by you.

I shall be glad if you will call at my office at an early date, in order that we may arrange matters with the view to satisfying the judgment.

Very respectfully yours,

James C. Pain, Esq.,
48 Nassau Street, City.

My dear Mr. Pain :

Your kind letter reached me during my absence in Albany. I shall be glad to avail myself of your courteous offer, provided the parties who at present hold the mortgage do not insist upon retaining it, in which case I should feel obliged to leave it with them, as they have been very courteous to me in all their dealings for many years. I have written to them on the subject, and shall expect to hear within a day or so, and will immediately advise you.

Yours truly,

Miss Katie J. Skeese,
201 East 93rd Street, New York.

Dear Madam :

It gives me great pleasure to inform you that the Court has just rendered a decision in your favor, and awarded you damages to the amount of \$2,500., with costs.

This is a signal triumph, and will form a valuable precedent in similar cases of *lashes* on the part of a landlord. The Court held that a landlord must keep his building lighted, and his carpets mended.

I will at once consult with the defendant's counsel with the view to a speedy settlement of this case.

Yours very truly,

To the Los Angeles Gas & Electric Company,
Los Angeles, Calif.

Gentlemen :

Notice is hereby given you that unless proper connections are made by your Company with my electric wires, in the building known as the Palace Lodging House, on Figueroa Street, in the City of Los Angeles, within twenty-four (24) hours after the service on you of this notice, that I will commence legal proceedings to recover damages that may be caused me, and will further commence proceedings to forfeit your franchise by reason of your failure to comply with the conditions under which said franchise was granted you.

Notice is also given you that the property herein mentioned has been properly and securely wired, and is now ready for the connection herein demanded.

Yours, etc.,

Messrs. Francis & Bruce,
Baltimore, Md.

Gentlemen :

In reply to your favor received to-day, I enclose herewith the Bill of Particulars for which you ask, and beg to say that Mrs. Hall seems perfectly willing to sign a release, but claims that a sale of the property was made shortly after her mother's death without her consent, and that she received but \$180. as her share of the proceeds. All she wants is a just proportion of her interest in the estate, but she has not the funds wherewith to push the case. She has asked me if I would be willing to undertake the case on a contingent fee, and I now write to ask if you will kindly look into the matter, and report as to whether she has a good case or not, and if so, if you will be willing to do the same. I shall be glad to receive a letter from you on the subject, and will do nothing until I hear from you.

Yours very truly,

(Enclosure)

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